no longer apply. Fed. R. Civ. P. 41(a)(2). Since Rule 41(a)(1) is a central tenet of the *Swift* standard, the Government cannot rely on the *Swift* standard in its attempt to dismiss this case.

2. Following the *Swift* standard would render parts of the FCA superfluous

Even if this Court finds that conversion did not occur, the *Swift* standard should not apply because it renders a section of the FCA meaningless. § 3730(c)(2)(A) explicitly sets out that an FCA *qui tam* action may only be dismissed if "the court has provided the person with an opportunity for a hearing on the motion." Since the *Swift* standard gives the government an "unfettered right to dismissal," it renders the hearing requirement superfluous. In doing so, the *Swift* court violates a basic canon of statutory interpretation as well as decades of Supreme Court precedent. *Hibbs v. Winn*, 542 U.S. 88, 89 (2004) ("the rule against superfluities instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous"); *see, e.g.*, *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 632 (2018) ("the Court rejects an interpretation of the statute that would render an entire subparagraph meaningless."); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("In construing a statute we are obliged to give effect . . . to every word Congress used."); *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1654 (2017).

Instead of giving effect to every word in § 3730(c)(2)(A), the *Swift* court read the hearing requirement to "simply . . . give the relator a formal opportunity to convince the government not to end the case." *Swift*, 318 F.3d at 253. In this interpretation of the statute, the hearing would not only make judicial action unnecessary, it would actually forbid it, as the government's right to dismiss would be unreviewable. *Id.* at 252. If that were the proper interpretation, Congress would not need to involve the court at all. If Congress had intended to reduce the hearing to a simple meeting between the government and the relator, it would have done so, just as it has done in other statutes in the past. *See, e.g.*, *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 494 (2015) (discussing Title VII's conciliation provision, which demands that

the Equal Employment Opportunity Commission communicate with an employer in some way to achieve an employer's voluntary compliance).

Indeed, Congress enacted the FCA "to enhance the Government's ability to recover losses sustained as a result of fraud against the Government." S. REP. 99-345, 1, 1986 U.S.C.C.A.N. 5266, 5266. It is not absurd to read § 3730(c)(2)(A) as the Legislative Branch creating a way for the Judicial Branch to prevent the Executive Branch from abusing delegated legislative power. *See United States v. EMD Serono, Inc*., 370 F. Supp. 3d 483, 489 (E.D. Pa. 2019). The hearing requirement is not an afterthought codifying a meeting time for the Government; it is instead consistent with the essential constitutional scheme of checks and balances. *Id.* It is not the place of the court to rewrite the statute to comport with its interpretation. *See Nat'l Ass'n of Mfrs.*, 138 S.Ct. at 632 ("The Court declines the Government's invitation to override Congress' considered choice by rewriting the words of the statute."); *see also Dodd v. United States*, 545 U.S. 353, 359 (2005) ("[T]he Court is not free to rewrite the statute that Congress has enacted.").

Even courts that generally agree with *Swift* have found its interpretation of the hearing requirement troublesome. The Seventh Circuit, in *United States v. UCB, Inc.*, agreed that Rule 41(a)(1)(i) gave the government the right to unfettered dismissal, but noted that it found *Swift*'s interpretation of the hearing requirement "unpersuasive." 970 F.3d at 851. The *UCB* court instead held that a hearing could potentially be held in "exceptional" cases of fraud or an arbitrary or irrational decision by the government, which is just a slightly stricter standard than the Ninth Circuit has adopted. *Id.* at 852; *United States ex rel. Kelly v. Boeing Co*., 9 F.3d 743, 754 (9th Cir. 1993) ("[E]videntiary hearings should be granted when the qui tam relator shows a 'substantial and particularized need' for a hearing."). Regardless of what standard should be adopted for a hearing, it is clear that many courts agree that § 3730(c)(2)(A)'s hearing requirement constitutes some level of judicial review. *See, e.g.*, *Ridenour v. Kaiser-Hill Co.,*

L.L.C., 397 F.3d 925, 935 (10th Cir. 2005) (noting that the court "construe[s] the hearing language of § 3730(c)(2)(A) to impart more substantive rights for a relator" than *Swift*). The *Swift* standard renders sections § 3730(c)(2)(A) superfluous, violating a basic canon of statutory interpretation. This Court should instead choose to give proper effect to Congress' words and decline to follow *Swift*.

B. The *Sequoia Orange* standard should govern this action

Under the *Sequoia Orange* standard, the government must satisfy a two-step test to justify dismissal: "(1) identification of a valid government purpose; and (2) a rational relation between dismissal and accomplishment of the purpose." *See* 151 F.3d at 1145. If the government satisfies the test, then the burden shifts to the relator to "demonstrate that dismissal is fraudulent, arbitrary and capricious, or illegal." *Id.* (internal citations omitted). This standard is rooted in principles of substantive due process: government action cannot be arbitrary or irrational. *Id.* at 1146. This Court should apply the *Sequoia Orange* standard, not only because *Swift* is inapplicable in this case, but because it is supported by legislative history, is consistent with precedent, and aligns with a basic Constitutional protection.

1. The *Sequoia Orange* standard is supported by legislative history

The *Sequoia Orange* court stated that its two-step standard drew significant support from the Senate Report to the False Claims Amendments Act of 1986, which commented on a draft provision that provided, "[i]f the government proceeds with the action . . . the [relator] shall be permitted to file objections with the court and to petition for an evidentiary hearing to . . . object to any motion to dismiss filed by the Government." *Id.* (citing S. REP. 9-345, 26 1986 U.S.C.C.A.N. 5266, 5266). The Senate Report explained that a hearing would be appropriate "if the relator presents a colorable claim that the settlement or dismissal is unreasonable in light of existing evidence, that the Government has not fully investigated the allegations, or that the Government's decision was based on arbitrary or improper

considerations." *Id.* The standard for obtaining a hearing should logically also provide the standard of the judicial review, so it is clear that rational basis should be the standard of review for the Government's decision to dismiss. *See United States v. Acad. Mortg. Corp.*, No. 16-CV-02120-EMC, 2018 WL 3208157, at *3 (N.D. Cal. June 29, 2018), *appeal dismissed*, 968 F.3d 996 (9th Cir. 2020).

The *Swift* court attempted to discount this legislative history by noting that the portion of the cited Senate Report "relate[d] to an unenacted Senate version of the 1986 amendment." *Swift*, 318 F.3d at 253. While this is true, the draft provision was almost identical to the enacted version. In fact, the *Swift* court primarily drew issue with the language in the draft provision that stated "[i]f the Government proceeds with the action," noting that the "whole point here is that the government has not elected to proceed; it has elected to dismiss the case." *Id.* at 253. However, "[i]f the Government proceeds with the action" was not even amended additional language; it was in the statute both before the 1986 amendments and remains a part of the statute today. 31 U.S.C. § 3730(c)(1). The *Swift* court's focus on "proceeds" is misplaced, as the statute presents a binary decision for the government: proceed with the action or decline to take over the action. 31 U.S.C. § 3730(b)(4)(A)–(B). As such, the government necessarily needs to "proceed" before it can move to dismiss, which is in accord with how courts have generally interpreted the statute. *See UCB*, 970 F.3d at 845; *United States ex rel. Poteet v. Medtronic, Inc.*, 552 F.3d 503, 519 (6th Cir. 2009) (noting that § 3730(c)(2)(A) only applies when the government has decided to proceed with the action).

Additionally, the enacted language was actually strengthened in favor of the relator, which supports the idea that Congress sought to afford relators some sort of protection from arbitrary decisions by the government. The enacted language does not require the relator to file an objection or to petition for a hearing, instead "provid[ing] the [relator] with an opportunity for a hearing on the motion" when the government moves to dismiss. 31 U.S.C. §

3730(c)(2)(A). Due to the minor differences in the draft provision and the enacted language, *Sequoia Orange* properly relied upon the Senate Report and the standard is supported by the legislative history.

2. The *Sequoia Orange* standard is consistent with Supreme Court and Fifth Circuit precedent that executive action should comport with substantive due process

The *Sequoia Orange* court explained that the two-step test employs the "same analysis . . . [as] determin[ing] whether executive action violate[d] substantive due process." *Sequoia Orange*, 151 F.3d at 1145.[2] This analysis finds support in the Fifth Circuit, which has held that "[e]very law or governmental act must be reasonably related to its end, and thus not 'arbitrary.'" *Brennan v. Stewart*, 834 F.2d 1248, 1256 (5th Cir. 1988); *see also FM Props. Operating Co. v. City of Austin*, 93 F.3d 167, 174 (5th Cir. 1996) ("[G]overnment action comports with substantive due process if the action is rationally related to a legitimate government interest."); *Schafer v. City of New Orleans*, 743 F.2d 1086, 1089 (5th Cir. 1984) ("The due process clause, in its substantive sense, requires only that the regulation be reasonably related to a valid governmental purpose."). The Supreme Court has also consistently emphasized this, noting that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

The *Swift* court contended that *Sequoia Orange*'s holding is contrary to the Supreme Court case *Heckler v. Chaney*, which the *Swift* court interpreted as holding that "arbitrary or irrational" decisions not to prosecute could not violate due process. *Swift*, 318 F.3d at 253. As

[2] The Eleventh Circuit read this to mean that the government's "dismissal may not violate the substantive component of the Due Process Clause. *UCB*, 970 F.3d at 851. This is a misreading of *Sequoia Orange*. The *Sequoia Orange* court explicitly noted that its decision was one of "statutory interpretation." *Sequoia Orange*, 151 F.3d at 1143. The test in *Sequoia Orange* is not necessarily as rigorous as the traditional substantive due process test, and even if it is, "[r]ules of due process are not . . . subject to mechanical application in unfamiliar territory" and "demand[] an exact analysis of circumstances." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 850 (1998).

the Seventh Circuit noted, "*Heckler* is an imperfect fit for the False Claims Act" because it relied in part on the fact that an agency's inaction generally "does not exercise its coercive power over an individual's liberty or property rights." *UCB*, 970 F.3d at 851. The FCA gives the relator an interest in the lawsuit, so the Government's unilateral dismissal would clearly implicate an individual's property rights.[3] *Id.* Additionally, *Heckler* involved an administrative agency's decision not to enforce in the context of a statute that precluded judicial review, whereas the FCA clearly contemplates judicial review through the hearing requirement. *See Heckler v. Chaney*, 470 U.S. 821, 837 (1985); 31 U.S.C. § 3730(c)(2)(A). Indeed, the Court has previously held that agency decisions not to act or litigate cases can be subject to judicial review for rationality, provided that a statute does not preclude such review. *See, e.g.*, *Dunlop v. Bachowski*, 421 U.S. 560, 561 (1975).

Rational basis review is not something that needs to be written into a statute before a specific executive action may be reviewed; it is instead the standard that lurks in the background governing *all* executive action. So, while Congress may not have explicitly included a standard of review in the statute, Congress did provide room for judicial review. Therefore, it would clearly not be judicial activism to apply a standard that has clear support in both Supreme Court and Fifth Circuit precedent.

C. Because the Government did not adequately investigate Relator's claims, the Government failed to demonstrate that dismissal would be rationally related to a valid government purpose

The district court considered how Relator would fare under the *Sequoia Orange* standard, but it erred in its application. D. Ct. Order, R. at 95. Under the standard, the Government identified resource preservation as its valid government purpose. But by failing to adequately investigate Relator's claims, the Government failed to establish that dismissal

[3] *Heckler* reserved judgment on what was proper if the "agency's refusal to institute proceedings violated any constitutional rights of respondents" as may be the case here. *Heckler v. Chaney*, 470 U.S. 821, 838 (1985).

bears a rational relationship to its purpose. Even if this Court finds that there was a rational basis, Relator has carried her burden by demonstrating that the investigation was inadequate so as to render dismissal arbitrary.[4] *See Sequoia Orange*, 151 F.3d at 1145 (noting inadequate investigation could render Government's dismissal "arbitrary or capricious").

The Government claims "the allegations lack sufficient merit to justify the cost of investigation and prosecution and [are] otherwise . . . contrary to the public interest." Gov. Mot. to Dismiss, R. at 74. Obviously, the Government may dismiss a meritless case, *see United States v. Fiske*, 968 F. Supp. 1347, 1353 (E.D. Ark. 1997), and it is well-established that the preservation of government resources is a valid government purpose. *See, e.g.*, *Sequoia Orange*, 151 F.3d at 1146; *Health Choice All. LLC ex rel. United States v. Eli Lilly & Co., Inc.*, No. 517CV00123RWSCMC, 2019 WL 4727422, at *3 (E.D. Tex. Sept. 27, 2019). However, the Government failed to fully investigate the Relator's claims and so failed to show that dismissal would be rationally related to either of those purposes.

1. The Government's Motion to Dismiss is not rationally related to curbing meritless claims

This case is substantially similar to *United States v. Academy Mortgage Corp.*, in which the court found the Government had "failed to conduct a full investigation." 2018 WL 3208157 at *2. In *Academy Mortgage*, the Government's investigation consisted solely of an interview with the Relator and a review of her documents, which pertained only to misconduct at the particular branch she worked at, did not involve the senior executives at all, and provided

[4] Despite *Swift* and *UCB*'s suggestion that Rule 41(a)(2) should govern this type of case, Rule 41 was intended to "curb abuses" and eliminate a vexatious plaintiff's "annoying of a defendant". Therefore, it would go against the policy and purpose of Rule 41 to apply it here. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 397 (1990). Because Rule 41 does not apply in this case, this Court should look to the other federal rule regarding dismissal and view this motion with the same considerations that govern a 12(b)(6) motion. *See Sequoia Orange*, 151 F.3d at 1145 ("The district court correctly ruled that Rule 41 did not apply."). According to Fifth Circuit precedent, "a motion to dismiss under 12(b)(6) is viewed with disfavor and is rarely granted." *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013) (internal quotations and citations omitted); *see also Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982) (noting there is a "strong framework of policy considerations that militate against granting motions to dismiss"); *IberiaBank Corporation v. Illinois Union Insurance Company*, 953 F.3d 339, 345 (5th Cir. 2020). These principles should guide the Court's decision.

no testimony from employees employed at other locations. *Id.* at *1. The court noted that a "more complete investigation was well within the Government's ability." *Id.* at *2. The same holds in this case.

Based on the Government's exhibit, the Government only substantially investigated the Peak Cuts Barbershop claim. Gov. Mot. to Dismiss, R. at 81. The rest of the Government's investigation relies on documents provided by the Relator with little additional insight. *Id.* at 79–80. There is no mention of investigating other Confluence Bank branches, no mention of senior executives being investigated, and no details on any investigation of any employees other than a sole mysterious mention of an investigation of "Cote and Presh's conduct." *Id.* at R. 80. Additionally, the Government continually mentions "referring [the claims] to the SBA for their review," which raises the question as to why the SBA was not initially consulted. *Id*. Indeed, the Granston Memo from the Justice Department explicitly states that the Government "should consult closely with the affected agency as to whether dismissal is warranted," so as to avoid this situation. Memorandum from the Commercial Litigation Branch, Fraud Section of the U.S. Dep't of Just. (Jan. 10, 2018) at 8 (hereinafter "Granston Memo").

It is also worth noting that the Government investigated this case for fewer than three months, which falls far short of other cases in which courts have rejected the claim of inadequate investigation. *See, e.g.*, *United States ex rel. Vanderlan v. Jackson HMA, LLC*, No. 3:15-CV-767-DPJ-FKB, 2020 WL 2323077, at *9 (S.D. Miss. May 11, 2020) (noting that government had allegedly been investigating for years); *United States v. Gilead Scis., Inc.*, No. 11-CV-00941-EMC, 2019 WL 5722618, at *6 (N.D. Cal. Nov. 5, 2019) (noting that the Government investigated the allegations for over two years). The Granston Memo provides insight into the Government's short turnaround and explains that dismissal under § 3730(c)(2)(A) for lack of merit is "rare" because the government typically does not fully investigate the merits of a case, but rather "investigate[s] a *qui tam* action only to the point

where it concludes that a declination is warranted." Granston Memo at 4. It is clear that the Government did not fully investigate Relator's claims, and as such, cannot dismiss this case due to lack of merit. At the very least, Relator has carried her burden and demonstrated that dismissal due to lack of merit would be arbitrary.

2. The Government's Motion to Dismiss is not rationally related to preserving government resources

As for preservation of government resources, despite the district court stating that "the mere cost of litigation is justification enough for dismissal," there must also be a rational relationship between conserving resources and dismissal. D. Ct. Order, R. at 95. In order to establish that relationship, the Government must have conducted a cost-benefit analysis. *See Acad. Mortg. Corp.*, 2018 WL 3208157 at *3. Even the Granston Memo expects the Government to conduct a cost-benefit analysis, noting that dismissal is warranted when "the government's expected costs are likely to exceed any expected gain." Granston Memo at 6. It would be impossible to contend that the litigation costs outweighs the potential recovery if the question of potential recovery is never broached. After all, the CARES Act was a novel experiment by Congress, so the Government cannot rely on past prosecutions to ascertain potential recovery; the Government would have had to actually take some affirmative action to analyze the potential proceeds from this case. The Government's exhibit contains no such analysis. Considering the numerous allegations of fraud, Confluence Bank's position as one of the top lenders in the country, and the amount that the Justice Department has previously recovered in FCA cases, there is little reason to believe that the potential recovery in this case would not be large enough to justify costs.[5] The Government is not expected to provide a

[5] "The U.S. Department of Justice obtained a record $5.69 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year [2014]." *Justice Department Recovers Nearly $6 Billion from False Claims Act Cases in Fiscal Year 2014*, DEPARTMENT OF JUSTICE (Nov. 20, 2014), https://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014. "[T]he department recovered an unprecedented $3.1 billion from banks and other financial institutions involved in making false claims for federally insured mortgages and loans." *Id.*

"particularized dollar-figure estimate," but there is a distinct lack of even a cursory cost-benefit analysis, thus failing the first step of the standard or at least satisfying the burden on the second step. *UCB*, 970 F.3d at 852.[6]

3. The Government's Motion to Dismiss is not rationally related to preventing interference with an agency policy or preference

Finally, the district court mentioned that the "Government also made clear its concerns that bringing this suit would potentially undermine the structure of the CARES Act and the SBA's ability to review PPP claims for misrepresentations or fraud." D. Ct. Order, R. at 95. It is unclear how this suit could undermine the CARES Act or even affect the Small Business Association.[7] The CARES Act involves a limited pool of funds from Congress, so the Relator's interest and the SBA's interest in recovering any fraudulently obtained funds align. The SBA's concern is not the lenders, but rather the businesses receiving the funds. Any lender certifying fraudulent claims should be liable for siphoning funds from struggling small businesses and defrauding the government, which is precisely the purpose of the FCA. Allowing the Government to arbitrarily dismiss this case because of an inadequate investigation disserves struggling businesses that desperately needed the funds that Defendants may have diverted to "businesses that shouldn't have qualified." R. at 67. At the very least, the importance of the CARES Act demands a reason for dismissal that is rationally related to a government purpose. The Government failed do so. This Court should reverse the district court and remand for further proceedings on the merits.

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[6] While the district court in *UCB* faulted the Government for not providing a particularized cost-benefit analysis, the Seventh Circuit found that was not a requirement. 970 F.3d at 852. However, the Government proposed to dismiss the case in *UCB* primarily because the Government had "consistently held that the conduct complained of [was] probably lawful" and not because of litigation costs.

[7] As the Ninth Circuit noted in denying the Government's appeal in *United States v. Academy Mortgage Corp.*, despite the Government's claims otherwise, "[the court] cannot escape the conclusion that the Government's true interest in dismissing this case is what it has repeatedly maintained throughout this litigation: avoiding burdensome discovery expenses in a case the Government does not think will ultimately be worth the cost." *United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1008 (9th Cir. 2020). This is supported by the Government's investigation when they noted that "going after 3D6 would be expensive[.]" Gov. Mot. to Dismiss, R. at 80. This Court should not lend much credence to the claim that this suit may undermine the CARES Act.

Applicant Details

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Date of JD/LLB	**May 19, 2019**
Class Rank	**20%**
Law Review/ Journal	**Yes**
Journal(s)	**Public Interest Law Journal of Boston University School of Law**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**Massachusetts, New York**

Prior Judicial Experience

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January 24, 2022

The Honorable Eric N. Vitaliano
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Vitaliano,

I am a third-year associate at Fried, Frank, Harris, Shriver & Jacobson LLP, and I am writing to apply for a clerkship in your chambers for the 2023-2024 term. While I have been successful in my current position, I am excited to further develop my legal career in federal practice.

In my position as an associate in Fried Frank's litigation department, I have developed my research and writing skills in complex securities litigation matters in both motion to dismiss and summary judgment contexts. I have also drafted discovery devices, taken a deposition of a named Plaintiff in a derivative securities action, supported multiple depositions as second chair, responded to governmental inquiries, was lead associate for an arbitration regarding a contract dispute involving the acquisition of a healthcare company, and handled demanding deadlines from both billable and pro-bono clients. My pro-bono matters have also given me substantial experience, from advocating on my feet in the Queens Family Court while representing a single mother in her custody matter, to substantial drafting and editing an amicus brief to the Supreme Court in the summer of 2021. I have experience in Federal appellate practice, drafting motions and reviewing administrative record in a matter that involved a conflict between the Religious Freedom Restoration Act and the rules developed by the Health and Human Services Department under the Administrative Procedure Act.

While in law school, I was an editor and member of the board of the Public Interest Law Journal, which selected my Note to publish after my graduation. As a student-attorney in the Criminal Clinic I represented adults and juveniles in Boston Municipal Court. Additionally, I worked as a research assistant to several professors where I provided research support and drafted academic articles, collaborated on a clinic curriculum that focused on access to the courts, and edited and updated Family Law textbook chapters. Finally, before law school, I was an investigative analyst at the Manhattan District Attorney's Office in the Major Economic Crime Bureau, where I investigated complex financial fraud, synthesized evidentiary materials for case reports, and created exhibits for, and testified to, empaneled grand juries. I hope to bring all the skills that I have developed through these experiences to your chambers.

As a first generation professional, I did not know prior to law school that judges had clerks. I only learned about the existence of such a position after I applied for a judicial internship with the Honorable Ann Donnelly in the Eastern District of New York. Her clerks were incredible writers and sharp thinkers who fostered the same skills in me. I want to be able to provide that same level of support to both a judge and their support staff. I would greatly appreciate the opportunity to interview with you and can make myself available at your convenience. Thank you for your consideration.

Sincerely,
Kellie Patricia Desrochers

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EDUCATION

BOSTON UNIVERSITY SCHOOL OF LAW, BOSTON, MA — AUGUST 2016 – MAY 2019
J.D., GPA: 3.73 (*cum laude*)
Law Journal: *Public Interest Law Journal*, Administrative Editor (2018 – 2019); published Note (2020 ed.).
Clinical Engagements: BU Criminal Law Clinic, Adult and Juvenile Defense (2018); Volunteer Lawyers Project, Court Authorized Family Law Clinic (Semester Volunteer 2017).
Honors: Sylvia Beinecke Robinson Award (2019); Paul J. Liacos Scholar (2017 – 2018); Supreme Judicial Court Pro Bono Recognition Honor Roll recipient (2019).
Activities: Co-Founder and Vice President of First Generation Professionals Student Group (2017 – 2018).

HARVARD UNIVERSITY, CAMBRIDGE, MA — AUGUST 2009 – MAY 2013
A.B. in Government, GPA: 3.642
Honors: Harvard Center for Public Interest Career Fellowship (May 2013).
Activities: Harvard Women's Rugby Club; Study Abroad at Oxford University, St. Catherine's College.
Select Term-Time Employment: Research Assistant at Weatherhead Institute for International Affairs; Paralegal Assistant at Sullivan & Worcester LLP; Staff at Harvard University Fine Arts Library.

RELEVANT EXPERIENCE

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP, NEW YORK, NY — SEPTEMBER 2019 – CURRENT
Associate, former *Summer Law Clerk,* Summer 2018

- Dually trained in Litigation and Asset Management.
- Lead associate on contract dispute matter before the American Arbitration Association.
- Primary drafter on portions of motion to dismiss, summary judgment motion, motion to seal and various discovery devices in securities fraud matters and a federal APA case in SDNY, DNJ, and N.D. Ind.
- First-chaired Rule 30(b)(6) deposition of a named-plaintiff in a federal securities fraud opt-out case.
- Primary author of section of *amici* brief in SCOTUS representing national non-profits and leading scientists.
- Lead associate coordinating 500+ exhibits for trial in the SDNY, among other trial preparation tasks.
- Lead associate appearing 3x in N.Y. state court for *pro bono* plaintiff, successfully settling custody dispute.

BOSTON UNIVERSITY SCHOOL OF LAW, BOSTON, MA — MAY 2017 – MAY 2019
Research Assistant for Clinical Professor Naomi M. Mann and Professor Linda McClain

- Conducted research and edited scholarly articles on feminist jurisprudence, Title IX, and Constitutional Due Process rights. Drafted case commentary in forthcoming book on feminist jurisprudence and Title VII cases.
- Developed curriculum for Access to Justice Seminar, Civil Law Clinic, (Fall 2019).
- Edited and updated new edition of Family Law casebook.

THE HONORABLE ANN DONNELLY, U.S.D.J., U.S. DISTRICT COURT, E.D.N.Y. — MAY 2017 – AUGUST 2017
Judicial Intern

- Drafted and cite-checked social security appeals opinions and assisted law clerks with their duties.

N.Y. COUNTY DISTRICT ATTORNEY'S OFFICE, MAJOR ECONOMIC CRIMES BUREAU — JULY 2013 – JULY 2016
Investigative Analyst, promoted from *Trial Preparation Assistant*

- Drafted subpoenas and search warrants and analyzed materials responsive to same, organized evidence and created visuals for grand jury presentations. Testified in two grand juries. Created and led the first multi-bureau training program for new paralegals. Investigative topics included: insider trading, life insurance fraud, money laundering, and pyramid schemes involving stocks and other investment vehicles.
- Financial intelligence surveillance included: investigating potentially criminal activity in digital currency, money services businesses, and stock fraud.

BAR ADMISSIONS: New York, Massachusetts, Southern District of New York, Eastern District of New York.

INTERESTS/VOLUNTEERING: Associate Board Member of Play Rugby USA, Harvard First Generation Low Income (FGLI) Alumna, mentor for BU and NYU law students, baker of delicious desserts, and an avid runner.

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Lastly, one other possible message, Author Unknown, can have two possible meanings: The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority and therefore has not been trusted, or the revocation check could not complete. If you receive this message make sure you are properly connected to the internet. If you have a connection and you still cannot validate the digital certificate on-line, reject this document.

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BOSTON UNIVERSITY SCHOOL OF LAW

Name: DESROCHERS, KELLIE P
Date Entered: 09/06/2016
Colleges and Degrees:
HARVARD UNIVERSITY, A.B. 5/2013
Other Law School Attendance:

Degree Awarded: JURIS DOCTOR
Date Graduated: 5/19/2019
Honors: CUM LAUDE

Academic Record		Credits	Grades
Semester 1 - 2016 -2017			
CIVIL PROCEDURE (A)	HARPER	4	B+
CONTRACTS (A)	CARUSO	4	A-
RESEARCH & WRITING SEMINAR I	MORLEND	1.5	A-
TORTS (A)	HYLTON, K.	4	B+
Semester 2 - 2016 -2017			
ADMINISTRATIVE LAW (A)	WEXLER	3	B+
CONSTITUTIONAL LAW (A)	LAHAV	4	A
CRIMINAL LAW (A)	BAXTER	4	B+
LAWYERING LAB	STAFF	1	P
MOOT COURT		-	P
PROPERTY (A2)	LAWSON	4	B+
RESEARCH & WRITING SEMINAR II	MORLEND	1.5	A-

Year	Hours	Weighted Points	Weighted Average					
1st	30/31	104.60	3.49					

Semester 1 - 2017 -2018			
EVIDENCE	CAPERS	4	B+
FAMILY LAW	MCCLAIN	4	A
NATIONAL SECURITY LAW	SLOANE	3	A+
PUBLIC INTEREST LAW JOURNAL - 2L MEMBER		1	CR
SEX CRIMES (S)	TENNEN	3	A+
Semester 2 - 2017 -2018			
CRIMINAL PROCEDURE: COMPREHENSIVE	ROSSMAN	4	A
CRIMINAL TRIAL ADVOCACY (C)	ROSSMAN	3	B+
CRIMINAL TRIAL PRACTICE I (C)	ROSSMAN	5	A
FEMINIST JURISPRUDENCE (S)	MCCLAIN	3	A
PUBLIC INTEREST LAW JOURNAL - 2L MEMBER		1	CR
Semester 3 - 2017 -2018			
BUSINESS FUNDAMENTALS	WALKER	-	P

Paul J. Liacos Scholar

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average		
2nd	29/31	112.90	3.89	59/62	217.50	3.69		

Semester 1 - 2018 -2019			
CRIMINAL TRIAL PRACTICE II/DEFENDERS (C)	KAPLAN/ROSSMAN	8	A
CRIMINAL TRIAL PRACTICE: PROF. RESPONSIBILITY (C)	HUROWITZ	3	A
INTERNATIONAL HUMAN RIGHTS (S)	CERONE	3	A+
REPRODUCTIVE JUSTICE (S)	BRIDGES	3	A-
Semester 2 - 2018 -2019			
ADV. CON LAW: CITIZENSHIP, IMM & THE CONSTITUTION (S)	COLLINS, K.	3	B+
CORPORATIONS	WALKER	4	B+
FEDERAL COURTS	COLLINS, K.	3	CR
GENDER, VIOLENCE & THE LAW (S)	DAHLSTROM	3	A
PUBLIC INTEREST LAW JOURNAL - 3L EDITOR		2	CR

SUCCESSFULLY COMPLETED VOLUNTARY PRO BONO PLEDGE

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average	Total Hours	Final Average
3rd	27/32	103.10	3.82	86/94	320.60	3.73	86/94	3.73

1974 Family Educational Rights and Privacy Act Information

The information contained on this transcript is not subject to disclosure to any other party without the expressed written consent of the student or his/her legal representative. It is understood this information will be used only by the officers, employees and agents of your institution in the normal performance of their duties. When the need for this information is fulfilled, it should be destroyed.

Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten

Aida E. Ten, Registrar

Date Printed: 4/21/2021

Boston University School of Law Transcript Guide

SYMBOLS OR ABBREVIATIONS

AUD	Audit	**H**	Honors
CR	Credit	**NC**	No credit
P	Pass	**F**	Fail
W/D	Withdrawal from course		
*	Indicates currently enrolled		
(C)	Clinical		
(S)	Seminar		
(Y)	Year-long course		

Academic Qualifications – JD Program: The School of Law has a letter grading system in courses and seminars. The minimum passing grade in each course and seminar is a **D**. Beginning with the Class of 2017, a minimum of eighty-five passing credit hours must be completed for graduation. Prior classes required a minimum of eighty-four passing credit hours. The minimum average for good standing is C (2.0) and the minimum average for graduation is C+ (2.3). Prior to 2006 the minimum average for good standing and graduation was C (2.0).

GRADING SYSTEM

1. **Current Grading System** The following letter grade system is effective fall 1995. The faculty has set the following as an appropriate scale of numerical equivalents for the letter grading system used in the School of Law:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-30%
B+ and above	40-60%
B	10-50%
B- And below	10-30%
C+ and below	0-10%
D, F	0-5%

2. **Fall 1995-Spring 2008**

For **first-year courses** with enrollment of twenty-six or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-25%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	5-10%
D, F	0-5%

3. **1991 Changes to Letter Grade System.**

The curve is mandatory for all seminars or courses with enrollments of twenty-six or more.

Grade	Number Equivalent	Curve
A+	4.5	
A	4.0	15-20%
B+	3.5	
B	3.0	50-60%
C+	2.5	
C	2.0	20-35%
D	1.0	
F	0	

The median for all courses with enrollments of twenty-six or more is B. For smaller courses, a median of B+ is recommended but not required.

GRADES FOR COURSES TAKEN OUTSIDE THE SCHOOL OF LAW

Grades for courses taken outside of BU Law are recorded as transmitted by the issuing institution or as CR. Credit toward the degree is granted for these courses and no attempt is made to convert those grades to the BU Law grading system. The grade is not factored into the law school average.

CLASS RANKS

BU Law does not rank students in the JD program with the following exceptions:

Mid-Year Ranks

Effective May 2014, the Registrar is authorized to release the g.p.a. cut-off points to the top 5%, 10%, 15%, 20%, 25% and one-third for the fifth semester in addition to third semester reporting adopted May 2013 and yearly reporting of the same.

Effective January 2013

For students who have completed their third semester, with respect to the cumulative average earned during the fall semester, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class. This is in addition to the yearly reporting described below.

Effective May 2011

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide grade point average cut-offs for the top 10 percent, 25 percent and one-third of each section.

For students who have completed their second year or third year, with respect to both the average earned during the most recent year and cumulative average, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class.

Class of 2008 and subsequent classes through April 2011.

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide g.p.a. cut-off points for the top 10 percent of each section.

For students who have completed the second year or third year, with reference to both the second-year or third-year g.p.a. and cumulative g.p.a., the Registrar will inform the top fifteen students in the class of their ranks and will provide g.p.a. cut-off points for the top 10 percent of the class.

Scholarly Categories (Based on yearly averages only)

Class of 2008 and subsequent classes:

First Year – the top five students in each first-year section will be designated G. Joseph Tauro Distinguished Scholars. The remaining students in the top ten percent of each first-year section will be designated G. Joseph Tauro Scholars.

Second Year – the top fifteen students in the second year class will be designated Paul J. Liacos Distinguished Scholars. The remaining students in the top ten percent of the second-year class will be designated Paul J. Liacos Scholars.

Third Year – the top fifteen students in the third year class will be designated Edward F. Hennessey Distinguished Scholars. The remaining students in the top ten percent of the third-year class will be designated Edward F. Hennessey Scholars.

Graduate Program Transcript Guides

LL.M. in Taxation

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

The grade averages of continuing part-time students whose enrollment began before the fall 1995 semester were converted to the new number equivalents.

Fall 1991 to Spring 1995

From the fall 1991 semester through the spring 1995 semester, the following letter grading system was in effect for students who were graduated before the fall 1995 semester:

A+	4.5	C+	2.5
A	4.0	C	2.0
B+	3.5	D	1.0
B	3.0	F	0.0

Current Degree Requirements

Effective May 2016, completion of 24 credits. Minimum average of 2.3 and no more than one grade of D.

Spring 1993 to Fall 2015

Completion of 24 credits. Minimum average of 3.0 and no more than one grade of D.

Fall 1991 to Fall 1993

Completion of ten courses (20 credits). Minimum average of 3.0 (with no more than one grade below 1.0).

LL.M. in Banking and Financial Law

Current Grading System

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective April 2016, completion of 24 credits with a minimum average of 2.7 and no more than one grade of D or F.

Fall 2012 to Spring 2016

Completion of 24 credits with a minimum average of 3.0 and no more than one grade of D or F.

Fall 1991 to Fall 2012

Completion of ten courses (20 credits). Minimum average 3.0 (with no more than one grade below 1.0).

LL.M. in American Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

LL.M. in Intellectual Property Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
C-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

Executive LL.M. in International Business Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective Spring 2014, completion of twenty credits with a minimum g.p.a. of 3.0 including the successful completion (CR) of two colloquia.

Grading System prior to Spring 2014

Honors (H)	Credit (CR)
Very Good (VG)	No Credit (NC)
Pass (P)	Fail (F)

Requirements Prior to Spring 2014

Completion of six courses (18 credits) and two colloquia (2 credits) for a total of 20 credits. The minimum passing grade for each course is Pass (P). The minimum passing grade for each colloquium is Credit (CR).

5/2016 rev2

Boston University's policies provide for equal opportunity and affirmative action in employment and admission to all programs of the University.

BU School of Law

Transcript Guide Addendum

JURIS DOCTOR PROGRAM

Grading System – Distribution Requirements

Effective Fall 2019

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	2-5 %
A+, A	15-25%
A+, A, A-	30-40%
B+ and above	50-70%
B	15-50%
B- and below	0-15%
C+ and below	0-10%
D, F	0-5%

Fall 2020

The distribution requirement for Fall 2020 upper-class courses with 26 or more students was suspended. Upper-level courses with 26 or more students were required to conform to a B+ median.

THE FACE OF THIS TRANSCRIPT HAS A CRIMSON BACKGROUND ON WHITE PAPER

Desrochers, Kellie Patricia 807-6394-8 Kirkland House

Admitted in 2009 from Brdgw Raynham Reg Hs
Awarded the AB degree, May 2013, Class of 2013

Field: Government

HARVARD COLLEGE
Cambridge, Massachusetts 02138

Michael P Burke, Registrar

Date of Issue:Nov 29,2016
Not official unless signed and sealed

COURSE TITLES		GRADE full	GRADE half
2009-2010			
LIFESCI 1A	Intro to Life Sciences I	B	
SPANSH AB	Beginning Spanish II	B+	
LIT-ART C-70	From Hebrew Bible to Judaism	A-	
GOV 20	Foundations Comparative Politic	A-	
EXPOS 20	Expository Writing 20	B+	
GOV 40	International Conflict and	B+	
FRSEMR 33G	Eloquence Personified: How to S	SAT	
SOCIOL 43	Social Interaction	A	
ANNUAL GPA: 3.476	COURSES PASSED: 4.00		
2010-2011			
ETH-REASON 22	Justice	B+	
ANTHRO 1710	Memory Politics	A-	
DRAMA 119	Vocal Production for the Stage	A	
ANTHRO 1205	Archaeology,Violence&Conflict	A	
GOV 97	Tutorial-Sophomore Year	A-	
GOV 1358	Presidential Power in the U.S.	B+	
ECON 10	Principles of Economics	B+	
ANNUAL GPA: 3.582	COURSES PASSED: 8.00		
2011-2012			
US-WORLD 16	Men and Women: Public & Private	A-	
GOV 98SL	Cycles of War and Peace	A-	
GOV 1207	Comp Politics of the Middle Eas	A	
SOCIOL 109	Leadership and Organizations	A-	
Spring Term:	Study Elsewhere		
Granted 2.0 course credits for work done at			
IFSA Butler: Oxford University.			
ANNUAL GPA: 3.753	COURSES PASSED: 12.00		
2012-2013			
RELIGION 50	Religion, Law and Am Politics	A-	
US-WORLD 38	Forced to be Free	A-	
CULTR&BLF 54	Nazi Cinema	A	
GOV 1740	International Law	A-	
ANTHRO 1882	The Woman and the Body	A	
RELIGION 110	Relig and International Politic	A	
GOV 1732	The Origins of Modern Wars	B+	
EXPOS 40	Public Speaking Practicum	A	
ANNUAL GPA: 3.793	COURSES PASSED: 16.00		
CUMULATIVE GPA: 3.642	SATISFACTORY LETTER GRADES: 14.00		

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THE FACE OF THIS TRANSCRIPT HAS A CRIMSON BACKGROUND ON WHITE PAPER

Harvard University

Cambridge, Massachusetts 02138

Harvard College

Desrochers, Kellie Patricia
Admitted in 2009 from Bridgewater-Raynham Rgnl Hs
Good Academic Standing

Kirkland House
HUID: **80763948**

Degrees Awarded

Degree: Bachelor of Arts
Date Conferred: 05/30/2013

Academic Program

Concentration: Government

Beginning of Harvard College Record

2012 Spring
Granted 16.000 credits for work done at IFSA Butler: Oxford University

Course	Description	Earned	Grade
FAS SA	Study Abroad	0.000	

Harvard College Career Totals

Cum GPA:	**0.000**	**Cum Totals**	**0.000**	**0.000**

End of Harvard College Record

Date Issued: 11/29/2016
Page 1 of 1

Michael P. Burke, Registrar
Not official unless signed and sealed

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BUTLER UNIVERSITY

Office of Registration and Records
4600 Sunset Ave.
Indianapolis, IN 46208-3485

Name : Desrochers, Kellie Patricia
Student ID: 400141200
Birthdate : 07-JAN
Address : 121 Sunset Drive
Raynham, MA 02767
United States

Print Date : 2012-07-13

- - - - - Beginning of Undergraduate Record - - - - -

Spring 2012

Program : Institute for Study Abroad

Course	Description	Attempted	Earned	Grade	Points
SA 3060	Univ of Oxford,St. Catherine's	24.00	24.00	P	
Program Dates: 01/01/2012 - 06/28/2012					
PO	The International Relations of the Middle East	8.00	8.00	A	
SO	Sociology of Genocide & Mass Extermination	4.00	4.00	A-	
PO	POLITICS 213 International Relations in the Era of the Cold War	8.00	8.00	A	
PO	Insurgency and Counter-insurgency in the Modern World	4.00	4.00	A	
TERM GPA : 0.000	TERM TOTALS :	24.00	24.00		0.000
CUM GPA : 0.000	CUM TOTALS :	24.00	24.00		0.000
Undergraduate Career Totals					
CUM GPA : 0.000	CUM TOTALS :	24.00	24.00		0.000

End Of Transcript

Michele A. Neary

This transcript is official when it bears the facsimile signature of the registrar and the seal of the University. This student is in good standing and eligible to return unless otherwise stated.

Butler University, a coeducational, independent, non-sectarian institution, was founded in 1855. It consists of College of Liberal Arts and Sciences, College of Education (including the Teachers College of Indianapolis since 1930), College of Business, College of Pharmacy and Health Sciences (including the Indianapolis College of Pharmacy since 1945), the Jordan College of Fine Arts (formerly the independent Arthur Jordan Conservatory of Music) and College of Communication. The Institute for Study Abroad provides educational programs overseas for students from accredited American colleges and universities.

Transcripts are prepared only on the written request of the student. The information contained in the transcript is confidential and should not be released without the student's written permission.

The unit of credit is the semester hour.
A 4.0 grade scale is used. Valid grades:

A	4.0	B	3.0	C	2.0	D	1.0
A-	3.67	B-	2.67	C-	1.67	D-	0.67
B+	3.33	C+	2.33	D+	1.33	F	0.0

- **I** Incomplete, no hours or points
- **X** Unredeemed incomplete, no hours, no points
- **W** Withdrew
- **P** Pass, hours earned only
- **V** Validation — hours earned only, for undergraduate students
- **N** Non credit — Audit course

System conversion information
Transfer credit for students who attended prior to the spring of 2001 is added to the cumulative hours earned in their first term of enrollment, but no detail is reflected on the official transcript.

Transfer credit for students who attended during or after the spring of 2001 is noted at the top of the transcript and is also reflected in the cumulative hours earned, starting with the term the credit was posted.

A grade of U was used for PE101 or 102 courses that were failed. This failure does not count in the student's GPA, nor hours earned or attempted.

Grading practices at Australian and British universities are based on procedures and practices quite different from the standard American grading system of A–F. In recording grades for study in Great Britain or Australia, these general standards apply:

- **A** Work of superior quality equivalent to First Class Honors or High Distinction.
- **B** Above average work equivalent to Second Class Honors or Distinction.
- **C** Satisfactory work equivalent to Third Class Honors or Pass.
- **D** Minimum acceptable passing work. The work would count toward the degree, but not necessarily the major requirements.
- **F** Failed to produce passing work.

January 27, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Re: Recommendation for Kellie Desrochers

Dear Judge Vitaliano:

I am writing to enthusiastically recommend Kellie Desrochers for a clerkship in your chambers. Kellie has applied to this clerkship at the recommendation of several professors at the Boston University School of Law. I am not alone in thinking that Kellie's nuanced legal reasoning and analysis, keen intelligence, stellar work ethic, and commitment to integrity make her an ideal clerkship candidate.

As an Associate Clinical Professor and Director of the Access to Justice Clinic at Boston University School of Law, I am privileged to work with many talented law students. Kellie was the clear standout in the hundreds that I have worked with. I consider myself fortunate to have worked with her, and I doubt that I will get the chance to work with a law student as talented as her again.

I first met Kellie in the fall of 2016. She approached me about being my research assistant and suggested how she could assist me with my work. I was struck both by her clear intelligence and her initiative. This impression only solidified as I continued to work with her for the next two years. I gave her an enormous amount of responsibility and she consistently met and exceeded the challenge. I was consistently able to depend upon her superlative research and writing skills, her intelligence, and her drive. In fact, I relied on her acumen as if she were a colleague, rather than a student.

As a research assistant, Kellie was reliably able to both summarize the state of the law and craft nuanced arguments for why one position should ultimately prevail. This does not mean that she was unaware of how complicated legal decision-making can be. To the contrary, she deftly and efficiently analyzed the merits on both sides of issues, and took careful consideration of the factors to balance in making recommendations. This careful and thoughtful approach is typical of Kellie. For example, prior to law school, she consciously chose to work both at the Manhattan DA's office, and now, at a defense firm, precisely so that she could hone her ability to see the law from multiple perspectives.

As a student attorney in the Criminal Law Clinic at BU Kellie's detailed and thorough approach to her legal cases has paid dividends. She is highly regarded for her ability to command the facts of her cases and for her dogged approach to finding precedent in her cases, even in evolving areas of the law. In addition, she is able to adapt her legal analysis to suit the needs of the client, or the "voice" of the supervising attorney that she is working with. When we worked together, she was incredibly adept at writing analysis that was suited to my scholarship. I have no doubt that she will quickly be able to recognize and adopt Your Honor's tone and voice in what she works on for you.

At BU Law, Kellie was widely recognized by her peers as a thought leader with regards to diversity, equity, and inclusion. For example, while at BU Law, she co-founded the First-Generation Professionals affinity group because she recognized that first-generation students faced knowledge gaps that could affect their success at law school and in obtaining legal employment. This is classic Kellie; she sees a problem and she finds a solution. The group has since grown to be one of the most active affinity groups at the law school and has helped a number of talented students.

Kellie has a finely-honed ability to question and examine how power interacts with identity in our legal system and society. Many are adept at critiquing what has come before; very few can think how Kellie does, which is how to build something new, and more inclusive. Kellie did not hesitate to examine her own assumptions and implicit biases and showed great cultural humility and skill when assisting me with developing access to justice curricula. I am immensely grateful that I was able to work with—and learn from—her for two years.

In addition to being a natural leader, Kellie is unfailingly a team player. Her advanced legal skills and acumen are coupled with an eagerness and willingness to enter into discussions about her analysis, and an openness to other opinions. Kellie is excited by ideas and consistently motivated to increase her understanding of what a fair or just result should be. This unusual balance is one of her many unique attributes. While at BU Law, she contributed to the community in countless ways, including (but definitely not limited to) being an active member of the Women's Law Association, a BU Law Admissions Ambassador, a Supreme Judicial Court Pro Bono Recognition Honor Roll recipient, and a volunteer for numerous pro bono activities. As a result of her stellar reputation in the community, she was awarded the ***Sylvia Beinecke Robinson Award***, which recognizes significant contribution to the life of the law school. I would fully expect that she would be an enthusiastic and considerate team member of your chambers.

Please contact me if I can be of further assistance. I may be reached via email at nmann@bu.edu or via telephone at (617) 935-1721.

Naomi Mann - nmann@bu.edu

Sincerely,

Naomi Mann

Associate Clinical Professor of Law
Executive Director, Civil Litigation and Justice Program
Founding Director, Access to Justice Clinic

Naomi Mann - nmann@bu.edu

January 27, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Judicial Clerkship Recommendation for Kellie Desrochers

Dear Judge Vitaliano:

I am the Associate Dean for Experiential Education and an Associate Clinical Professor at Boston University School of Law, and I am writing to highly recommend Kellie Desrochers for a judicial clerkship. I supervised Kellie when she was a student attorney in the Defender Division of the Criminal Law Clinic in fall 2018. In this setting, I learned about Kellie's excellent abilities as a legal thinker, researcher and writer, and oral communicator. It is for all these reasons that Kellie is an excellent candidate for a position as a judicial law clerk.

Kellie is an analytical legal thinker and excellent researcher and writer. During her time in the Clinic, Kellie worked diligently and creatively on multiple cases, including some challenging ones that presented innovative legal issues. In one case, for example, Kellie researched, drafted and eventually argued a motion and supporting memorandum of law to depose a key witness in a criminal case, who had moved from the jurisdiction. Kellie spotted all relevant issues, conducted extensive research across jurisdictions to support her claim, distilled criminal and civil rules of procedure to write an exceptionally thorough and convincing motion, which I have archived for use in future cases. Deposing a witness in a Massachusetts criminal case is unorthodox and, during my years practicing in the jurisdiction, I have not heard such a request from either the defense or the government, so we knew it was an uphill battle. However, this did not dissuade Kellie and instead invigorated her efforts and work. Ultimately, the court denied our motion but the judge and I were thoroughly impressed with Kellie's motion and argument. In a different matter, Kellie drafted another novel motion requesting all hospital procedures regarding patient property in a case where her client was accused of drug possession in the emergency room. Her written work product was again exceptional, thorough and timely.

Understanding that as a law clerk Kellie would not be in the position of advocate, I would be remised if I did not also highlight Kellie's skills in oral communication. Kellie is persuasive, but beyond that she is just a fabulous and clear oral communicator. In the role of student attorney, I have observed Kellie accurately and convincingly explain her conclusions to multiple judges. In my own supervision, I frequently ask my students to thoroughly explain their findings. Kellie was always able to answer complex questions, think through the information, and engage in in-depth discussions about how her findings relate to the client problem at hand. This was testament not only to her keen legal mind, but also to her preparation. During our semester together, Kellie performed several mock trials and arguments in preparation for real court appearances. I cannot think of a time when she was not expertly prepared and did not perform well before the court. I will share one of my comments from my evaluation of Kellie in one of these mock trials: "Excellent ability to prepare quickly, be organized, handle stress, incorporate feedback, and perform under pressure."

It was certainly a pleasure to work with Kellie and the clinic clients greatly benefitted from her skills. Kellie is impressive. She has a strong legal mind, well-developed research and writing skills, and is an excellent communicator. Thus, I enthusiastically recommend her for a clerkship because I am confident she will demonstrate these qualities in that position. Please feel free to contact me at (617) 353-3172 if you have any questions about Kellie and her work.

Sincerely,

Karen Pita Loor
Associate Dean of Experiential Education
Associate Clinical Professor of Law
& Michaels Research Faculty Scholar

January 27, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Recommendation of Kellie Patricia Desrochers for Judicial Clerkship

Dear Judge Vitaliano:

I write with enthusiasm to recommend to you the application of Kellie Patricia Desrochers for a clerkship in your chambers. I have had the opportunity to get to know Kellie very well because: (1) during her second year at Boston University School of Law (in the fall 2017 semester), she was a student in my Family Law course; (2) she took my Feminist Jurisprudence seminar in the spring 2018 semester; (3) I was the faculty supervisor on her student note, through which she fulfilled the Upper-class Writing Requirement; and (4) during the summer after her second year at BU Law and continuing through her third year, she was my research assistant. Kellie and I have also kept in touch since she graduated. Based on these experiences, it is my strong conviction that Kellie would be a highly committed, capable, and efficacious law clerk. As I previously stated in supporting her admission to the bar in the Commonwealth of Massachusetts, Kellie also has exemplary personal qualities: she is an ethically upright, caring, and highly responsible person.

I first got to know Kellie when, as a 2L, she took my Family Law course, in which she received an A. Kellie showed great interest in the topic of family law; throughout the semester, she was a lively and valuable class participant. Her steady participation and enthusiasm contributed to a spirit of shared enterprise with other students in the class. Her comments often combined practical awareness of "on the ground" issues about family law practice with sensitivity to larger doctrinal points (perhaps because of her clinical and pro bono work in family law issues).

Kellie also took my Feminist Jurisprudence seminar, in which she also earned an A. As with Family Law, Kellie participated frequently and valuably in a way that provided an anchor for class discussion and a sense of intellectual camaraderie. Pertinent to her clerkship application, her written work for the seminar was excellent. It included several short reflection papers and three longer essays on various issues covered in the seminar. In addition, because she was a research assistant for my colleague Professor Mann, who gave a guest lecture in my seminar on Title IX and campus sexual assault, Kellie co-taught that particular class session with Professor Mann. She did so capably and thoughtfully.

I can speak to Kellie's impressive research and writing abilities because I supervised her student note, *Municipalities Are Not Kingdoms: Regulating Gun Ownership in Cases Involving Domestic Violence in Light of the* Pauler *Decision*, published in the *Public Interest Law Journal*. That note offered a thoughtful critique of a recent federal appellate court opinion that seemed to undermine federal statutory restrictions on gun possession by persons who had committed domestic violence. Kellie cared passionately about the issue and worked extensively on the note. I commented on several drafts, each of which showed significant revision and further work. She approached the student note with her characteristic gusto and energy and produced a polished and persuasive final draft.

Based on this supervising experience as well as Kellie's excellent work in my Family Law course, I hired her as a research assistant. Her primary tasks related to preparing a new edition of my co-authored casebook, *Contemporary Family Law* (West Academic, 5th 2019) (with Douglas Abrams, Naomi Cahn, and Catherine Ross). Kellie's responsibilities included researching recent developments in several areas of family law: changes in state marriage laws (including the rapidly evolving landscape concerning access by same-sex couples to marriage); rights and responsibilities of nonmarital cohabitants; and the law concerning premarital, postnuptial, and settlement agreements. She wrote a series of lucid and through memos about her research on case law and statutory law in these areas—these were a tremendous help because she included recommendations of which new cases seemed the most promising as principal or note cases or as the basis for problems. Kellie also reviewed the copyedited chapters and assisted in revising the Teacher's Manual that accompanies the casebook. Kellie was a conscientious and reliable research assistant who demonstrated exemplary work habits and produced work of consistently high quality.

In the various capacities in which I have known Kellie, she has stood out for her strong sense of team spirit and energetic engagement with the task at hand—qualities that should serve her well as a law clerk. Based on her numerous activities focused on building community life at BU Law, including co-founding a student group for first generation professionals, I nominated her for the Sylvia Beinecke Robinson Award, a graduation award based on service at BU Law. My colleagues shared my conviction: Kellie received that award. I also know that, as a young person, she has shouldered a fairly unusual degree of responsibility for her siblings, contributing to her maturity and practicality

In sum, I believe that Kellie Patricia Desrochers would be an excellent judicial clerk. I recommend her to you with enthusiasm.

Sincerely,

Linda C. McClain
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The following document contains excerpts of an *amici* brief filed in the Supreme Court in *Dobbs v. Jackson Women's Health Organization* on behalf of the Society for Maternal-Fetal Medicine, Royal College of Obstetricians and Gynaecologists, U.S. Association for the Study of Pain and 27 Scientific and Medical Experts. The Statement of Interest of *Amici Curiae* and Summary of Argument portion is provided to give additional context.

I was the primary drafter of Section II of this brief. The filed version, which is attached, did receive edits from the clients as well as more senior attorneys, but accurately reflects my abilities as a sample of written work product.

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici are professional organizations, physicians, and researchers committed to advancing and promoting science and medicine, and doing innovative work in the fields of maternal and fetal care, pain experience, and pain management.[2] *Amici* have collective experience in practicing pain and maternal-fetal medicine and conducting peer-reviewed published research. Collectively, *amici* have published more than 2,000 scholarly works and are affiliated with over 20 of the world's most prestigious universities. *Amici* are uniquely positioned to provide the Court with the insight and perspective of the medical and scientific community, neither of which are otherwise available from the parties, on whether it is possible for human fetuses to experience pain.

SUMMARY OF ARGUMENT

The world's leading scientists and medical organizations agree that it is impossible for a fetus to experience pain prior to viability,[3] because the

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[1] No counsel for any party has authored this brief in whole or in part, and no person has made any monetary contribution intended to fund the preparation or submission of this brief. As required, all parties were provided notice and consented to the filing of this brief; the consent letters have been filed with the clerk.

[2] *See* Appendix A.

[3] "Viability is the capacity of the fetus for sustained survival outside the woman's uterus. Whether or not this capacity exists is a medical determination, may vary with each pregnancy and is a matter for the judgment of the responsible health care

necessary cortical and spinal cord structures do not develop before at least 24 weeks of gestation. Despite this medical consensus, the State and its *amici* argue without scientific or medical support that an interest in preventing "fetal pain" justifies Mississippi's 15-week abortion ban. *Amici* here provide this Court with accurate information grounded in science and medical evidence.

Substantial evidence demonstrating that a pre-viable fetus cannot experience pain supported this Court's decision in *Roe* and cases that reaffirmed the viability line. New research using innovative techniques has only bolstered that evidence. The ability to experience pain requires multiple different levels of the nervous system to be developed, connected, and capable of processing the sensory and emotional components of pain. Experiencing pain in response to external stimuli is dependent upon sensory nerve fibers, the presence of a sufficiently developed cortex, and intact pathways to relay nociceptive messages from the sensory nerve fibers to the cortex. Neither the cortex nor nociceptive inputs to the spinal cord are sufficiently developed for a pre-viable fetus to experience pain.

The positions of the State and its *amici* on "fetal pain" have been rejected by leading medical organizations and are contradicted by peer-reviewed evidence. The State and its *amici* argue first, that

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provider." Abortion Policy, ACOG, https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/abortion-policy (last visited Sept. 11, 2021). Each pregnancy is unique and requires access to individualized care; decisions should be between the patient and care provider.

pain is possible without conscious awareness, and second, that the cortex is not necessary for pain to be experienced. These are unsupported views. Significantly, several authors of the studies on which the State and its *amici* rely are signatories to *this amicus* brief. This alone informs this Court that the State's position misrepresents those experts' work and the science. This Court should not disturb settled precedent based on unsupported assertions that contradict both scientific evidence and the consensus of medical organizations that this Court and others have consistently viewed as authoritative—the Society for Maternal-Fetal Medicine ("SMFM"), the American College of Obstetricians and Gynecologists ("ACOG"), the Royal College of Obstetricians and Gynaecologists ("RCOG"), and the U.S. Association for the Study of Pain ("USASP")—which all concur that a fetus cannot experience pain before 24 weeks of gestation.

ARGUMENT

I. Widely accepted scientific evidence is clear and major medical organizations agree: a fetus cannot experience pain prior to viability.

The State concedes that H.B. 1510 (the "Ban") is a pre-viability prohibition on abortion and therefore takes the position that the Court should discard the viability line to uphold the Ban. In doing so, the State makes assertions about "fetal pain" that are demonstrably false and ignore the medical consensus.

The evidence supporting the medical consensus is clear: prior to viability, a fetus lacks the neural circuitry and pathways that are essential to

many reasons why anesthetics and analgesics are used in fetal surgery and these are unrelated to pain prevention, including enabling the safe accomplishment of the procedures through muscle relaxing effects of anesthetics.[35]

Conscious awareness is required to experience pain, and conscious awareness is not possible without sensory nerve fibers, an intact pathway to the cortex, and a developed cortex, all of which are not sufficiently present and functional until at least 24 weeks of gestation or later in pregnancy. This overwhelming global consensus has been published, peer-reviewed, and reaffirmed many times by leading scientific and medical experts, and medical organizations.[36]

II. The State's position on "fetal pain" is contrary to the scientific and medical consensus and has never been accepted by a major medical organization.

The State would have this Court ignore the leading medical organizations including SMFM, RCOG, USASP, and ACOG—which all agree that a pre-viable fetus cannot experience pain. Rather, the

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[35] *See id. See also* SMFM Consult #59, at 10-13; RCOG, *Fetal Awareness*, at viii. Anesthetics and analgesics (1) maintain physical stability during a procedure, (2) improve surgical access and prevent contractions and placental separation, (3) prevent hormonal stress responses associated with poor surgical outcomes, and (4) prevent possible adverse effects on long-term neurodevelopment. *See* Lee et al., 294 JAMA at 949.

[36] *See, e.g.*, SMFM Consult #59, at 4-5; RCOG, *Fetal Awareness*, at viii ("A fetus cannot experience pain prior to 24 weeks because the cortex is insufficiently developed.").

State asks this Court to endorse fringe views[37] and to undo decades of legal precedent on the basis of discredited pseudo-science.[38]

A. *The State's* amici *conflate nociception and pain, which are fundamentally distinct.*

The State's *amicus* and expert, Dr. Condic, has no clinical experience providing pain management or

[37] The American College of Pediatricians ("ACP") claims 500 members, merely .02% of U.S. pediatricians. U.S. Bureau of Labor Occupational Employment and Wage Statistics, https://www.bls.gov/oes/current/oes291221.htm (last visited Sept. 4, 2021). *Cf. Groups: American College of Pediatricians*, Southern Poverty Law Center, https://www.splcenter.org/fighting-hate/extremist-files/group/american-scollege-peditricians (last visited Aug. 18, 2021) (identifying the ACP as a political organization); *Groups: Pacific Justice Institute*, Southern Poverty Law Center, https://www.splcenter.org/fighting-hate/extremist-files/group/pacific-justice-institute (last visited Aug. 18, 2021) (identifying the Pacific Justice Institute as a political organization).

[38] The State and its *amici* describe the age of a fetus in a way that is at odds with general practice. Scientific and medical literature generally describes fetal growth in weeks post last menstrual period, or weeks of gestation. Dr. Condic, by contrast, uses "weeks of fetal development," which is based on the moment of conception. *See* Pet. for a Writ of Certiorari App. (Decl. of Maureen Condic) at 76a, *Dobbs, et al. v. Jackson Women's Health Org., et al.* (U.S. June 15, 2020) (No. 19-1392) [hereinafter Pet. App.]; Brief of Maureen Condic and the Charlotte Lozier Institute as *Amici Curiae* Supporting Petitioners at 11 n.10, *Dobbs, et al. v. Jackson Women's Health Org., et al.* (U.S. July 29, 2021) (No. 19-1392) [hereinafter Condic *Amicus* Brief]. Dr. Condic's unusual metric may confuse readers into believing that fetal development occurs approximately two weeks earlier than the scientific community agrees that it does.

maternal or fetal care in any capacity.[39] She has no peer-reviewed publications on "fetal pain," and has never conducted research on or taught the topic.[40] Dr. Condic also admits that not a single article she cites in the declaration she submitted to the district court in this case reached the same conclusion that she did.[41] In a different case, after she admitted in her deposition that her opinions about "fetal pain" lacked support, the opposing party moved to preclude her testimony, and she was thereafter withdrawn as an expert.[42] Her attempts to misrepresent the science of pain should not be credited by this Court.[43]

Dr. Condic relies on a faulty definition that equates pain with reflexive and hormonal responses. As discussed *supra* Section I.A, the scientific and medical consensus is that pain involves both a sensory *and* an emotional experience, and requires

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[39] *See* Pet. App. at 75a-76a.

[40] *See id.* at 101a.

[41] *See id.* at 85a-87a; Deposition of Maureen Condic at 128-129, *Elderkin v. Greater New Haven OB-GYN Grp., P.C.*, No. NNH-CF-15-6056191-S (Conn. Super. Ct. Mar. 6, 2017).

[42] *See* Disclosure of Expert Witness, *Elderkin v. Greater New Haven OB-GYN Grp., P.C.*, No. NNH-CV-15-6056190-S (Conn. Super. Ct. Oct. 19, 2016); Plaintiffs' Witness List, *Elderkin v. Greater New Haven OB-GYN Grp., P.C.*, No. NNH-CV-15-6056190-S (Conn. Super. Ct. Jan. 26, 2018).

[43] For example, Dr. Condic claims that RCOG's May 2008 review relies on three papers. Pet. App. at 86a-87a; Condic *Amicus* Brief, at 15. The RCOG report utilized over 50 papers in its analysis. *See* RCOG, *Fetal Awareness*, at 3.

conscious awareness.[44] Dr. Condic admits that she equates pain with nociception, thereby ignoring necessary components of pain, and adopting a definition rejected by the medical community.[45] The sources Dr. Condic and other *amici* cite do not conclude (or even suggest) that nociception is equivalent to pain, yet Dr. Condic testified in her declaration that they do.[46] This view disregards decades of accumulated evidence of the physiology of pain and the universally accepted definition of pain.

Equating "pain" with nociception conflates two fundamentally distinct phenomena. As discussed *supra* Section I.A, reacting to nociception is not the same thing as experiencing pain. Infants born with anencephaly (lacking part of the brain and skull) and individuals in a vegetative state can both exhibit nociceptive reflexive withdrawal, but cannot experience pain.[47] The stimulus requires transmission to the cortex in order to be perceived as pain.[48] Even in an individual with a complete spinal cord transection, a noxious stimulus to the leg can provoke reflexive movement, but the individual will not experience pain. In this example, nociception from the leg remains, but there is no pain experience

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[44] Raja et al., 161 J. of the Int'l Ass'n for the Study of Pain at 1976, 1977.

[45] *See* Deposition of Maureen Condic at 114-116, *Elderkin v. Greater New Haven OB-GYN Grp., P.C.*, No. NNH-CF-15-6056191-S (Conn. Super. Ct. Mar. 6, 2017); Pet. App. at 77a-78a, 85a.

[46] Pet. App. at 77a-78a.

[47] *See* Lee et al., 249 JAMA at 948, 950.

[48] *See supra* Section I.C.

because the stimulus is not transmitted to the cortex. This example illustrates that nociceptive activity must be processed by the cortex in order for pain to be experienced.[49] Thus, any definition of pain that does not include conscious awareness, mediated by the cortex, is entirely contrary to well-established science and clinical practice.

B. *International consensus rejects the State's assertion that the cortex is not necessary to experience pain.*

The State's *amici* submit that a developed cortex is not necessary for conscious experience of pain. Again, this ignores the scientific consensus, defying decades of multidisciplinary research explained *supra* Section I.

The State's *amici* assert that the thalamus is sufficient and responsible for conscious pain experience,[50] contrary to the international consensus that a developed cortex is necessary to experience pain.[51] Scientific evidence shows that the thalamus, while part of the sensory pathway that transmits nociceptive information to the cortex, is not sufficient to generate a pain experience alone. Rather, the

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[49] RCOG, *Fetal Awareness*, at 5.

[50] *See* Condic *Amicus* Brief at 14, 19-20; Brief of the ACP & the Association of American Physicians & Surgeons as *Amici Curiae* Supporting Petitioners at 18-19, *Dobbs, et al. v. Jackson Women's Health Organization, et al.*, (U.S. July 29, 2021) (No. 19-1392); Brief of Monique Chireau Wubbenhorst et al. as *Amici* Curiae in Support of Petitioners at 23-24, *Dobbs, et al. v. Jackson Women's Health Organization, et al.* (U.S. July 29, 2021) (No. 19-1392).

[51] *See supra* Section I.C.

scientific consensus is that the thalamus is merely part of the pathway that brings sensory information to different parts of the cortex.[52] There is no evidence that the thalamus itself can process that information.[53] In fact, the evidence consistently points to the contrary: the thalamus is not the center of the pain experience in the brain. If the thalamus is responsible for pain experience, then lesioning the thalamic region where nociceptive information is relayed should nullify pain. There is 100 years' worth of evidence to the contrary: such thalamic lesions commonly lead to chronic pain rather than the absence of pain.[54]

In contrast, there is evidence that specific lesions in the cortex can create distortions in pain experience.[55] That is, disturbing cortical circuits can affect conscious pain experience. The best example of a condition demonstrating the role of the cortex is called pain asymbolia, where the subject can feel a sensation in response to noxious stimuli but it "doesn't hurt." This rare condition is associated with damage to tissue in and around the region of the cortex known as the insular cortex.[56] Pain asymbolia could not exist if the thalamus, and not the cortex, was the center of the pain experience. In that

[52] *Id.*

[53] *Id.*

[54] *See* Vartiainen et al., *Thalamic pain: anatomical and physiological indices of prediction*, 139 Brain J. of Neurology 708, 709 (2016).

[55] *See, e.g.,* Berthier et al., *Asymbolia for Pain: A Sensory-Limbic Disconnection Syndrome*, 24(1) Annals Neurology 41 (1988).

[56] *Id.*

scenario, cortical damage would not result in any change to pain experience: that kind of change in experience would occur only if the thalamus was injured.

C. *The State's* amici *misinterpret scientific evidence related to the cortex to support their erroneous conclusions.*

Dr. Condic's misrepresentation of the science of pain and fetal development becomes apparent upon examination of her sources—whether those used in her declaration below or her *amicus* brief to this Court. Her submissions and those of the State's other *amici* persistently mischaracterize scientific data and rely on inapplicable studies.

Dr. Condic's *amicus* brief relies heavily on the article *Reconsidering Fetal Pain* by Stuart Derbyshire and John Bockmann, which attempts to call into question the necessity of the cortex for the "apprehension" of pain.[57] Notably, the "apprehension" of pain is a definition that is not supported by the IASP.[58] The article itself concedes that conscious pain experience requires certain functioning cortical regions.[59] And most significantly, three authors of the two most important studies used by Derbyshire—Dr. Salomons, Professor Iannetti,

[57] Stuart Derbyshire and John Bockmann, *Reconsidering Fetal Pain*, 46 J. Med. Ethics 3 (2020) [hereinafter Derbyshire].

[58] *IASP Announces Revised Definition of Pain*, Int'l Ass'n for Study of Pain, https://www.iasp-pain.org/PublicationsNews/NewsDetail.aspx?ItemNumber=10475 (last visited July 15, 2021).

[59] Derbyshire, at 5.

and Dr. Feinstein—are signatories to this *amicus* brief and assert that the results of their studies are being misinterpreted by the Derbyshire article and consequently by the State's *amici*.

Dr. Salomons' and Professor Iannetti's decades of studies focus specifically on the functional significance of the brain responses elicited by noxious stimuli. They note that Derbyshire mischaracterizes their extensive research when describing their empirical results.[60] Dr. Salomons and Professor Iannetti unequivocally state that their research does not support Derbyshire's conclusions. For example, citing a study co-authored by Dr. Salomons and Professor Iannetti on patients congenitally insensitive to pain, Derbyshire suggests that the results support their claim that the cortex is unnecessary to perceive pain.[61] In fact, although study participants had a normally functioning cortex and thalamus, the nociceptive sensory nerve fibers that transmitted stimuli to the spinal cord were not functioning due to certain gene mutations. Therefore, the study actually shows that in the absence of activity in functioning nociceptive sensory nerve fibers, activity of the thalamus and cortex is not sufficient to generate pain.[62] The study does not show that the cortex is unnecessary for pain to be experienced. The original study, as well as subsequent, more recent papers, state that the study

[60] *Id.* at 4.

[61] *Id.* (citing Tim Salomons et al., *The "Pain Matrix" in Pain-Free Individuals*, 73(6) JAMA Neurology 755 (2016)).

[62] *See* Salomons et al., 73 JAMA Neurology at 755-56.

results do not imply that the cortex is not necessary to experience pain.[63]

Derbyshire also misinterprets the results of a one-patient study conducted by *amici* Drs. Feinstein and Salomons and uses those misinterpretations to form further erroneous conclusions. The study patient had experienced extensive, but importantly, not complete, damage to the cortex, and was able to experience pain. Derbyshire claims the patient's experience of pain—with a partly functioning cortex—somehow provides support for the idea that a cortex is *not* necessary to experience pain.[64] The study actually concludes that the patient's experience of pain was due to the damaged brain's adaptability to develop circuits around the damaged section of the cortex.[65] The study emphasized that many other regions of the patient's cortex were intact that could potentially be mediating his pain experience,[66] and that it is entirely plausible that the patient was able to feel pain using the preserved areas of his cortex. The study did not comment on the experience of an undamaged brain, or an undeveloped fetal brain. Nor did it show that the thalamus was the "source" of the patient's pain experience, as Derbyshire claims.

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[63] *See, e.g.*, Andre Mouraux & Giandomenico Iannetti, *The search for pain biomarkers in the human brain*, 141 Brain 3290 (2018).

[64] Justin Feinstein et al., *Preserved emotional awareness of pain in a patient with extensive bilateral damage to the insula, anterior cingulate, and amygdala*, 221(3) Brain Structure & Function 1499, 1509-1510 (2016).

[65] *Id.*

[66] Including the supplementary motor area, paracingulate gyrus, and primary and secondary somatosensory cortices.

Dr. Condic also mischaracterizes other studies. For example, in her declaration below, Dr. Condic asserts that "the largest study conducted to date of human patients with disorders of consciousness unambiguously concludes that loss of subcortical, not cortical, circuitry is associated with loss of consciousness."[67] This is demonstrably false. The study only considered structures *within* the subcortex[68] in patients with extensive mechanical damage to the cortex. The study authors fully acknowledge the role of the cortex in conscious perception.[69] Therefore, the study did not even contemplate that the cortex is unnecessary for consciousness or that the thalamus is sufficient for conscious awareness.

The State's *amici* also cite outdated and inapposite studies. For example, Dr. Condic's declaration below relies on a 1954 study about the brain's pain responses in adult patients with epilepsy conducted before brain imaging was possible.[70] However, a 2012 study of adult patients with epilepsy, discussed *supra* Section I.B, showed that the cortex plays a causal role in pain experience.[71] Dr.

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[67] Condic *Amicus* Brief at 19 (citing Evan Lutkenhoff et al., *Thalamic and Extrathalamic Mechanisms of Consciousness After Severe Brain Injury*, 78 Annals of Neurology 68, 68 (2015)); Pet. App. at 90a.

[68] *I.e.,* thalamus, basal ganglion, hippocampus, and brainstem.

[69] Lutkenhoff et al., 78 Annals of Neurology at 68.

[70] Condic *Amicus* Brief, at 21; Pet. App. at 93a & n.43.

[71] Laure Mazzola et al., *Stimulation of the human cortex and the experience of pain: Wilder Penfield's observations revisited*, 135 Brain 631, 635-639 (2012).

Condic also points to studies that focus on chronic pain in adults to support her assertions that the cortex is not necessary for "fetal pain" to exist.[72] However, the studies' findings that distinct chronic pain conditions generate distinct brain activity patterns do not demonstrate that a fetus can feel pain, and actually discredit her position because the cortex was always involved in the chronic pain brain activities reviewed.[73]

In other instances, Dr. Condic relies on flawed interpretations of studies relating to the cortex's role in pain experience, and her conclusions often directly contradict the research she cites. For example, Dr. Condic's declaration below cites an article that investigates how general anesthesia renders a patient unconscious.[74] Dr. Condic cites this study to support her false claims that the cortex is *not* involved in conscious pain experience. In fact, that study found that it was the disruption of cortical activity that

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[72] Condic *Amicus* Brief, at 21-22; Pet. App. at 93a & n.43.

[73] *See, e.g.*, Marwan Baliki et al., *Corticostriatal functional connectivity predicts transition to chronic back pain*, 15(8) Nature Neuroscience 1117, 1117-1119 (2012); Paul Geha et al., *Brain activity for spontaneous pain of postherpetic neuralgia and its modulation by lidocaine patch therapy*, 128(1) J. of Pain 88 (2007); Javeria Hashmi et al., *Shape shifting pain: chronification of back pain shifts brain representation form nociceptive to emotional circuits*, 136 Brain J. of Neurology 2751 (2013); Etienne Vachon-Presseau et al., *Corticolimbic anatomical characteristics predetermine risk for chronic pain*, 139 Brain J. of Neurology 1958 (2016).

[74] Pet. App. at 91a & n.37 (citing Lynn Uhrig et al., *Cerebral mechanisms of general anesthesia*, 33 Annales Fr. Anesth. Reanim. 72, 72-83 (2014)).

suppressed consciousness.[75] Further, the study did not even evaluate the thalamus, which Dr. Condic erroneously concludes is the main site of action for anesthesia to take effect.[76]

Lastly, Dr. Condic's declaration below cites an article relating to brain imaging pain modulation and asserts that there are only two regions in the cortex involved when processing painful experiences.[77] In fact, the study Dr. Condic cites shows brain imaging that supports the conclusions of *amici* here: a wide range of regions in the cortex and connected circuitry are necessary for the experience of pain.[78]

CONCLUSION

The international scientific and medical consensus is clear that it is not possible for a pre-viable fetus to experience pain. This Court should not disturb settled precedent based on unsupported claims that contradict both scientific evidence and the consensus of medical organizations.

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[75] Uhrig et al., 33 Annales Fr. Anesth. Reanim. at 72-83.

[76] Pet. App. at 91a-92a.

[77] Condic *Amicus* Brief, at 19 n.28; Pet. App. at 92a & n.40.

[78] Ulrike Bingel & Irene Tracey, *Imaging CNS modulation of pain in humans*, 23 Physiology 371, 373 & fig. 2 (2008).

Applicant Details

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Applicant Education

BA/BS From	**Vassar College**
Date of BA/BS	**May 2012**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 14, 2018**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Journal of Transnational Law**
Moot Court Experience	**Yes**
Moot Court Name(s)	**National Native American Law Students Association Moot Court**

Bar Admission

Admission(s)	**New York**

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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February 24, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
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Dear Judge Vitaliano:

I am a fourth year litigation associate at White & Case and a 2018 graduate of Columbia Law School, where I served as Executive Editor of the *Columbia Journal of Transnational Law*. I write to apply for a clerkship in your chambers for the 2023-2024 term.

I hope to work as a federal prosecutor and strongly believe that serving as a district court clerk will allow me to gain invaluable practical experience with the federal court system and trial practice. My experience interning with the U.S. Attorney's Office for the Southern District of New York confirmed my interest in becoming a federal prosecutor, and I now specialize in white collar criminal defense and regulatory investigations at White & Case. I would appreciate the opportunity to apply the research and writing skills that I have developed as a practicing attorney over the past four years to a clerkship position.

Enclosed, please find my resume, transcripts, and writing sample. Also enclosed are letters of recommendation from Professors Bert Huang (212-854-8334, bhuang@law.columbia.edu), Jeremy Kessler (212-854-4947, jkessler@law.columbia.edu), and Susan Sturm (212-854-0062, ssturm@law.columbia.edu). My two employer references, Douglas R. Jensen (212-819-8513, douglas.jensen@whitecase.com) and Tami Stark (212-819-2674, tami.stark@whitecase.com), also encourage you to reach out to them directly with any questions.

Thank you for your consideration. Please do not hesitate to contact me if you need any additional information.

Respectfully,

Thomas Enering

THOMAS K. ENERING
43-25 Hunter Street, Apartment 1010W | New York, New York 11101 | (973) 800-3077 | thenering@gmail.com

EDUCATION

Columbia Law School, New York, NY
Juris Doctor, received May 2018
Honors: Harlan Fiske Stone Scholar
Public Interest Honors
Neil McDonell Memorial Prize for Outstanding Journal Work
Activities: *Columbia Journal of Transnational Law*, Executive Editor
RightsLink, Events Committee Chair
National Native American Law Students Association Moot Court

University of Cambridge, Cambridge, UK
MPhil, *with Merit*, received July 2013
Major: International Relations
Honors: Maguire Fellow (one of eight Vassar students selected for a postgraduate fellowship)

Vassar College, Poughkeepsie, NY
A.B., *General and Departmental Honors*, received May 2012
Major: Political Science and History
Honors: Julia Flitner Lamb Prize (highest GPA in Political Science department junior and senior years)
Ida Frank Guttman Prize (best Political Science thesis)
Activities: Vassar College Debate Society, Captain

EXPERIENCE

White & Case New York, NY
Associate, White Collar Group October 2018 – Present
Summer Associate May 2017 – July 2017
Currently on secondment at Meta (Facebook). Served on a trial team representing a healthcare insurance company in a two week trial before the Delaware Court of Chancery. Performed legal research and drafted motions in federal court on a broad range of matters, including bankruptcy, contract disputes, securities litigation, and white collar criminal law. Supervised document review teams for internal investigations and drafted investigative reports. Worked on numerous pro bono matters, including a successful criminal appeal before the New York Supreme Court, Appellate Division.

U.S. Attorney's Office for the Southern District of New York New York, NY
Extern September 2017 – December 2017
Drafted court filings and research memos for the Violent and Organized Crime Unit. Assisted General Crimes Unit investigators in developing evidence for financial fraud cases.

Professor Bert Huang, **Columbia Law School** New York, NY
Research Assistant January 2017 – December 2017
Analyzed secondary legal literature regarding the law's influence on moral intuitions. Compiled empirical studies soliciting participants' opinions on a variety of criminal liability questions.

NYU Law Center for Human Rights and Global Justice New York, NY
Legal Intern May 2016 – July 2016
Performed research and editing tasks for the United Nations Special Rapporteur on Extreme Poverty and Human Rights regarding the cholera epidemic in Haiti and criminal justice reforms in China.

Sanford Heisler Sharp New York, NY
Legal Assistant September 2013 – July 2015
Catalogued and reviewed large volumes of evidence to assist with plaintiff-side whistleblower and employment claims.

INTERESTS: Long-distance running, travel, urban history.

PUBLICATIONS: Tai Park & Thomas Enering, *Global Anti-Corruption Enforcement: American Style*, 53 REV. SEC. & COMMODITIES REG. 101 (2020).

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Thomas Kyle Enering
SSN#: XXX-XX-6587
SCHOOL: SCHOOL OF LAW

DEGREE(S) AWARDED: DATE AWARDED:
Juris Doctor (Doctor of Law) May 16, 2018 PROGRAM: LAW

PROGRAM TITLE: LAW

HARLAN FISKE STONE SCHOLAR-SECOND YEAR ENDING MAY 17
MANDATORY PRO BONO, 40 HOURS

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
Fall 2015				
LAW	L 6101	CIVIL PROCEDURE	4.00	B
LAW	L 6113	LEGAL METHODS	3.00	CR
LAW	L 6115	LEGAL PRACTICE WORKSHOP I	1.00	HP
LAW	L 6118	TORTS	4.00	A-
LAW	L 6133	CONSTITUTIONAL LAW	4.00	A-
Spring 2016				
LAW	L 6105	CONTRACTS	4.00	B+
LAW	L 6108	CRIMINAL LAW	3.00	B+
LAW	L 6116	PROPERTY	4.00	B
LAW	L 6121	LEGAL PRACTICE WORKSHOP I	1.00	P
LAW	L 6369	LAWYERING FOR CHANGE	3.00	A-
LAW	L 6873	NALSA MOOT COURT	0.00	CR
Fall 2016				
LAW	L 6241	EVIDENCE	4.00	B+
LAW	L 6429	FEDERAL CRIMINAL LAW	3.00	B+
LAW	L 6640	JOURNAL OF TRANSNATIONAL	0.00	CR
LAW	L 8661	SEMINAR SUPREME COURT	2.00	A-
LAW	L 8890	S NAT'L SECURITY INVEST &	2.00	B+
Spring 2017				
LAW	L 6231	CORPORATIONS	4.00	B
LAW	L 6269	INTERNATIONAL LAW	3.00	A-
LAW	L 6640	JOURNAL OF TRANSNATIONAL	0.00	CR
LAW	L 6672	MINOR WRITING CREDIT	0.00	CR
LAW	L 6675	MAJOR WRITING CREDIT	0.00	CR
LAW	L 6683	SUPERVISED RESEARCH PAPER	3.00	A
LAW	L 6685	SERV-UNPAID FACULTY RSRCH	2.00	CR
LAW	L 8169	S MEDIA LW FR PRINT TO DI	2.00	A-
LAW	L 9175	SEM-TRIAL PRACTICE	2.00	A-

L6683 WITH KNUCKEY, SARAH
L6685 WITH HUANG, BERT

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
Fall 2017				
LAW	L 6238	CRIMINAL ADJUDICATION	3.00	B+
LAW	L 6359	PROFESSIONAL RESP IN CRIM	3.00	B+
LAW	L 6425	FEDERAL COURTS	4.00	B
LAW	L 6603	EXT:US ATTY OFF STHRN DIS	2.00	CR
LAW	L 6603	EXT:US ATTY OFF S DST NY-	2.00	CR
LAW	L 6640	JOUR TRANSNATNL LAW EDIT	1.00	CR
Spring 2018				
LAW	L 6204	ADMINISTRATIVE LAW	4.00	A
LAW	L 6473	LABOR LAW	4.00	B
LAW	L 6640	JOUR TRANSNATNL LAW EDIT	1.00	CR
LAW	L 8663	C COURTS AND THE LEGAL PR	1.00	CR
LAW	L 8876	S INTL CIMINAL INVESTIGAT	2.00	A-
LAW	L 9167	S TOPICS-CRIM PROSECTN &	2.00	A-

This official transcript was produced on
JUNE 01, 2019.

SEAL OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

Barry S. Kane
Associate Vice President and University Registrar

[redacted]

Student No: 999329183 Date Issued: 22-SEP-2021

Record of: Thomas Kyle Enering Page: 1

Course Level: Undergraduate
High School: West Milford Township Hs

Current Program
Major : History
Major : Political Science

Degrees Awarded: Bachelor of Arts 20-MAY-2012
Major : History
Major : Political Science
Dept. Honors: History
Political Science
Inst. Honors: General Honors

SUBJ NO.	COURSE TITLE	UNITS	GRD	PTS
TRANSFER CREDIT ACCEPTED:				
2007	CEEB - Advanced Placement			
ENGL	English Language & Composition	1.0	TR	
HIST	American History	1.0	TR	
POLI	American Government & Politics	1.0	TR	
PSYC	Psychology	1.0	TR	
EUnit 4.0	GPAUnit: 0.0	QPts: 0.00	GPA: 0.00	
VASSAR CREDIT:				
Fall 2008				
ENGL 101	Deception/Truths about Lies	1.00	A	4.00
HIST 121	Readings in Modern Europ Hist	1.00	A	4.00
POLI 150	Comp Pol:Analyzing Pol/World	1.00	A	4.00
PSYC 105	Intro to Psychology: A Survey	1.00	A	4.00
EUnit 4.0	GPAUnit: 4.0	QPts: 16.00	GPA: 4.00	
Spring 2009				
ECON 100	Intro to Macroeconomics	1.00	PA	0.00
HIST 278	Cold War America	1.00	A-	3.70
PHIL 106	Philo & Contemp Issues	1.00	A-	3.70
POLI 160	International Politics	1.00	A	4.00
EUnit 4.0	GPAUnit: 3.0	QPts: 11.40	GPA: 3.80	
Fall 2009				
FREN 205	Intermediate French I	1.00	B+	3.30
HIST 224	Modern Japan, 1868-Present	1.00	A-	3.70
HIST 264	Latin America in the 20th Cent	1.00	A	4.00
POLI 250	African Politics	1.00	A	4.00
SOCI 151	Intro to Sociology	1.00	A	4.00
EUnit 5.0	GPAUnit: 5.0	QPts: 19.00	GPA: 3.80	
Spring 2010				
HIST 251	History/American Foreign Reltn	1.00	A-	3.70

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO.	COURSE TITLE	UNITS	GRD	PTS
Vassar Information continued:				
POLI 242	Law, Justice, and Politics	1.00	A	4.00
POLI 270	Modern Political Thought	1.00	A-	3.70
RUSS 142	Dostoevsky and Psychology	1.00	A	4.00
EUnit 4.0	GPAUnit: 4.0	QPts: 15.40	GPA: 3.85	
Fall 2010				
ENGL 255	Nineteenth Cent British Novels	1.00	A	4.00
HIST 255	The British Empire	1.00	A-	3.70
HIST 338	America in Europe	1.00	A-	3.70
POLI 314	Politics of Public and Private	1.00	A	4.00
PSYC 231	Principles of Development	1.00	A	4.00
EUnit 5.0	GPAUnit: 5.0	QPts: 19.40	GPA: 3.88	
Spring 2011				
HIST 208	Human Rights/US For Pol 1945	1.00	A	4.00
JAPA 364	The West in Japanese Literatr	1.00	A	4.00
POLI 260	International Relatns 3rd Wrld	1.00	A	4.00
POLI 346	Sem/American Politics	1.00	A	4.00
EUnit 4.0	GPAUnit: 4.0	QPts: 16.00	GPA: 4.00	
Summer 2011				
POLI 290	Intern/Legal Services	1.00	SA	0.00
EUnit 1.0	GPAUnit: 0.0	QPts: 0.00	GPA: 0.00	
Fall 2011				
HIST 274	Colonial Amer, 1500-1750	1.00	B+	3.30
HIST 299	Thesis Preparation	0.50	A	2.00
HIST 300	Senior Thesis	0.50	A-	1.85
HIST 351	Problems/U.S. Foreign Policy	1.00	A	4.00
POLI 301	Senior Thesis	0.50	A	2.00
POLI 360	Ethics of War and Peace	1.00	A	4.00
STS 138	Energy:Sources and Policies	0.50	A-	1.85
EUnit 5.0	GPAUnit: 5.0	QPts: 19.00	GPA: 3.80	
Spring 2012				
ECON 273	Development Economics	1.00	A-	3.70
HIST 272	Mod African Hst Snc 1800	1.00	A-	3.70
HIST 301	Senior Thesis	0.50	A-	1.85
INTL 235	Ending Deadly Conflict	1.00	A-	3.70
POLI 302	Senior Thesis	0.50	A	2.00
EUnit 4.0	GPAUnit: 4.0	QPts: 14.95	GPA: 3.73	

********** CONTINUED ON PAGE 2 **********

Student No: 999329183

Date Issued: 22-SEP-2021

Record of: Thomas Kyle Enering
Level: Undergraduate

Page: 2

********** TRANSCRIPT TOTALS **********

	Earned Unit	GPA Un.	Points	GPA
TOTAL VASSAR	36.0	34.0	131.15	3.85
TOTAL TRANSFER	4.0	0.0	0.00	0.00
OVERALL	40.0	34.0	131.15	3.85

********** END OF TRANSCRIPT **********

COLLEEN R. MALLET

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ISSUED TO STUDENT

Columbia University
in the City of New York

Law School

SUSAN STURM
George M. Jaffin Professor of
Law and Social Responsibility
Tel: (212) 854 0062
Fax: (212) 854 7946
Email: ssturm@law.columbia.edu

February 24, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am writing to recommend Thomas Enering for a position as your law clerk. I got to know Thomas well as a student in my Lawyering for Change class in the Spring of his first year of law school. Lawyering for Change is a highly interactive class that requires students to blog weekly, write a political autobiography, and produce a final paper that applies the theories of change we explore in the class to an issue of importance. I interacted extensively with Thomas in the context of this class. I was deeply impressed with his insight, knowledge, commitment, communication skills, and leadership. Thomas's written work in the course was outstanding. Based on his performance in that class, followed by his impressive work as an attorney working to implement some of his ideals, I highly recommend him for this judicial clerkship.

Thomas' written work in Lawyering for Change showcased his outstanding abilities as a thinker, writer, and strategist. His weekly blog posts, which constitute 40 percent of the grade, were among the best in the class. They demonstrated his capacity to read carefully, synthesize and present information effectively, and to extract the most important insights going to the heart of the issue. His blog posts often went beyond critique, and offered innovative strategies for addressing complex problems with the features of uncertainty, complexity, and public urgency. He demonstrated a sophisticated understanding of litigation, remedies, and judicial intervention, as well as an ability to contextualize the law and understand it in a much larger context. He also showed considerable flexibility and range in his theories of change. His trenchant analysis went beyond litigation to include analyses of legislation, community organizing, and political activism. He often connected theoretical and empirical knowledge with his own experience in education or as a volunteer in Kenya before law school.

In his final paper for Lawyering for Change, Thomas identified a crucial and under-appreciated issue: the challenge of providing quality education for students from low income, rural communities. He effectively mined insights and concerns stemming from his own upbringing as a first generation college graduate who grew up in a poor, rural community. His paper effectively used his first-hand knowledge to deepen and strengthen a highly effective analysis of the problem and to inform a creative and sophisticated set of solutions. His experiences become a jumping off point for an original and insightful critique of a highly respected paper addressing the issue of under-enrollment by low-income students due to misinformation. Thomas used his powerful analytical mind to marshal data with rigor and persuasiveness in support of his argument. His paper exemplified a first rate mind, a careful and analytical mode of inquiry, an effective use of narrative, and a terrific combination of pragmatism and vision.

Thomas' work in Lawyering for Change also demonstrated an unusually sophisticated strategic capacity. His papers, blog posts, and political autobiography documented a recurring and urgent problem, isolated a leverage point for tackling that problem, and showed how to organize resources and action to maximize the impact of a chosen strategy. He also demonstrated outstanding ability to consider multiple perspectives, and explore and consider different and competing ideas. These capacities both enhanced the rigor of his analysis and enabled him to interact effectively across difference.

Thomas' work also showed outstanding ability to synthesize complex and unwieldy information, and then use that information effectively to address a challenging problem. His ability to organize and synthesize diverse forms of knowledge yielded innovative and non-obvious approaches to problems, resting on strong empirical, logical, and normative foundations. He showed a willingness to work hard, to go beyond assigned readings, and to apply concepts and strategies from one field of practice to another.

Thomas' participation also exemplified unwavering commitment to improving education for low-income communities in rural areas, as well as addressing international human rights. He wrote about issues with a level of concreteness and urgency that demonstrated long-standing engagement with these issues, ongoing inquiry about how to use the law to become an effective change agent, and unwavering intention to use his law degree to advance positive social change in these areas.

I was deeply moved by Thomas' willingness to engage in reflection about his role, his history, and the law's place. He managed to blend this deep commitment and work ethic with humility, great organizational skills, and attention to detail. Thomas is both humble and confident, open-minded and firm in his values. He is intellectually curious and has a clear idea of why he wants to clerk.

Since graduating from law school, Thomas has identified ways to use his practice to advance the anti-poverty goals he laid out while in law school. For instance, he has devoted substantial time to representing low-income debtors in a class action against Ferguson, Missouri, challenging the city's policy of conditioning release from prison on a monetary payment of fines and failing to conduct an individualized indigence analysis. He has had the opportunity to work with experts, conduct depositions, analyze records, and develop legal arguments as part of preparing a summary judgment motion. He has thus taken concrete steps to advance the ideals that he identified in Lawyering for Change, as well as to build his analytical skills and his mastery of facts, which will prove invaluable to his performance as a law clerk.

In sum, I have no doubt that Thomas will make an outstanding law clerk. I wholeheartedly recommend him.

All my best,

Susan Sturm

Susan Sturm
Director, Center for Institutional and Social Change
George M. Jaffin Professor of Law and Social Responsibility

February 24, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I write with great enthusiasm to recommend Thomas Enering to you. Tom was an excellent research assistant for me here at Columbia Law School; he also took two of my courses, Torts and a seminar on Courts and the Legal Process. Prior to law school, he worked as a legal assistant and also received an M.Phil. from the University of Cambridge. Since law school, his work as an associate at White & Case has included a range of civil litigation and pro bono criminal appeals matters; and he has expressed a keen interest in serving as a federal prosecutor.

As a research assistant for me, Tom's memos were smart, insightful, and always on point. The nature of the project we worked on together required him to survey a variety of academic literatures for papers addressing the role of law in influencing moral intuitions—readings spanning legal philosophy, moral psychology, and the social sciences. The specific topics he delved into ranged from the expressive effect of law to the role of peer influence in creating social norms, and from perceptions of law's legitimacy to the possible backlash effects that may occur when the law aims to reinforce certain moral values. Curating and assembling the most relevant materials for me drew on Tom's multidisciplinary fluency; and throughout our work together, he showed deep intellectual engagement and imagination. For example, in our exchanges about the possible mechanisms of the law's influence on moral intuitions, we pondered how to examine whether people see the law as a signal of community values, as distinct from other possible mechanisms of influence (such as seeing the law as a moral authority per se); and Tom offered interesting suggestions for the design of the survey experiments I was setting up that could be useful for sorting among such subtle differences.

Tom's analytical talents were also evident in the sophistication of his writing, both in his memos as a research assistant and in his response papers for my seminar. For each session of my seminar on Courts and the Legal Process, an academic researcher presented a paper draft about courts or judging, and I invited a judge to respond to the paper; the students' response papers went to both the presenter and the judge in advance of the seminar. Tom's responses were creative and constructive, pointing out further angles that could be addressed in the papers, and how the researcher might do so; in fact, one of his comments was expressly mentioned by the presenter, in a rare individual shout-out.

I hope you will find a chance to meet Tom. He was a pleasure to work with—always considerate, courteous, collegial, and thoroughly professional. He knows when to ask for feedback, and how not to overdo it. And I have seen that he is well-liked by his peers; among other things, he was elected to serve as Executive Editor on the *Columbia Journal of Transnational Law*. I know he will integrate smoothly into your chambers from day one—and produce top-quality work.

If I can tell you more, you are welcome to reach me at bhuang@law.columbia.edu, or at my personal phone, (857) 928-4324. Thank you.

Sincerely,

Bert Huang
Michael I. Sovern Professor of Law
Columbia Law School

February 24, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

It is a pleasure to recommend Thomas Enering for a clerkship in your chambers. Tom has a sharp, subtle legal mind and a remarkable capacity to absorb unfamiliar bodies of law and scholarship with ease. He will make an exceptional clerk.

Out of more than seventy students in my Spring 2018 Administrative Law lecture, Tom was one of the two or three best. In and out of class, in person and on the page, he demonstrated both a comfort with complexity and first-rate instincts about when big problems have simple solutions.

Ever since our first office-hours conversation, Tom has impressed me with his facility for legal argument. Plenty of smart students will charge into a debate, convinced they are going to win. Tom distinguishes himself by asking the right questions: making sure he understands the stakes of a debate, and the relative strengths of the competing views, before weighing in. As a result, Tom's peers listen to his well-chosen interventions with real curiosity and respect; his in-class performance lent both clarity and gravity to our discussions.

In light of Tom's in-person strengths, I was not surprised to find that he had written an extraordinary final exam. This exam was an eight-hour take-home, featuring a two-part issue spotter and an essay question concerning the optimal degree of congressional control of the administrative process. Tom made impressive use of the extended time frame, producing two issue-spotter answers that read like tight, well-crafted bench memos. He cut through extraneous detail, flagged red herrings, and zeroed in on the decisive questions of law and fact. These answers demonstrated total control of the relevant precedents and, where precedent ran out, a veteran's grasp of the normative and policy choices underlying administrative law doctrine. Both the substance and style of Tom's performance made it easy to pick his exam as one of the two models I circulated to the rest of the class – and will continue to circulate in future years.

I have every reason to believe that Tom will become a valued and trusted public servant, and look forward to hearing about his experiences as a clerk and, one day, a federal prosecutor. Please do not hesitate to contact me if I can be of further assistance.

Best wishes,

Jeremy Kessler

Jeremy Kessler - jkessler@law.columbia.edu

WRITING SAMPLE

Thomas Enering
43-25 Hunter Street, Apartment 1010W
New York, New York 11101
(973) 800-3077
thenering@gmail.com

The attached writing sample is an abridged draft of a Reply Brief that I wrote for a criminal appeal before the New York Supreme Court, Appellate Division. I have received permission from my employer to use this writing sample.

In this case, defendant Matthew Mann was accused of robbing Stephanie Morris with a knife inside an Amalgamated Bank branch in Queens County on July 15, 2016. Ms. Morris identified Mr. Mann as her assailant to Detective Shawn Johnston after viewing only the first of eight photographs generated by an NYPD photo manager. After this identification, Detective Johnston told Ms. Morris that the police would contact her to view a lineup as soon as they made an arrest. On July 20, 2016, Ms. Morris identified Mr. Mann as her assailant from a lineup. Mr. Mann was the only person in this lineup wearing a yellow shirt, the same color shirt that Ms. Morris had included in her original description of her attacker.

At Mr. Mann's trial, the People's proof consisted solely of Ms. Morris's identification of Mr. Mann at the lineup; testimony from Detective Johnston about Ms. Morris's lineup identification; and video surveillance footage of the robbery. The jury found Mr. Mann guilty of first-degree robbery. The trial judge sentenced Mr. Mann to ten years in prison and five years of supervised release.

Working with a non-profit public defender organization, White & Case represented Mr. Mann in his appeal. Ultimately, the New York Supreme Court, Appellate Division issued an Order on June 10, 2020 reversing defendant's conviction as against the weight of the evidence.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

----------x

THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

MATTHEW MANN, :

Defendant-Appellant. :

----------x

PRELIMINARY STATEMENT

This brief is submitted in reply to the People's brief, which was filed on January 27, 2020. On February 24, 2020, this Court granted Appellant Matthew Mann an enlargement of time, until March 2, 2020, to file his Reply.

This brief addresses certain arguments the People make regarding the issues Mr. Mann raised in Points I and II of his main brief. The People's other arguments are fully addressed in Mr. Mann's main brief and do not merit rejoinder.

ARGUMENT

POINT I

THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE BECAUSE MATTHEW MANN DID NOT LOOK LIKE THE ROBBER DEPICTED IN VIDEO SURVEILLANCE FOOTAGE OR MATCH THE COMPLAINANT'S INITIAL DESCRIPTION.

A. The verdict was against the weight of the evidence.

The People failed to prove Mr. Mann's guilt beyond a reasonable doubt at trial. The verdict was against the weight of the evidence because Mr. Mann did not look like the robber depicted in the video surveillance footage or match victim Stephanie Morris's initial description. (App. Br. 15-27.) In their Response Brief, the People largely ignore the weight of the evidence claim raised

by Mr. Mann on appeal and inaccurately frame his argument as a "legal sufficiency" claim, devoting numerous pages of their brief to a standard of review never invoked by Mr. Mann. (Resp. Br. 15-24); *People v. Bleakley*, 69 N.Y.2d 490, 495 (1987) ("Although the two standards of intermediate appellate review – legal sufficiency and weight of evidence – are related, each requires a discrete analysis.")

When the People do address the weight of the evidence claim in passing, they mischaracterize this legal standard by positing that it requires this Court to "assume that the fact-finder credited the testimony of the prosecution's witnesses and gave the prosecution's evidence all the weight it was reasonably due." (Resp. Br. 25.) In fact, the weight of the evidence standard demands that the Court first "determine whether an acquittal would not have been unreasonable." *People v. Danielson*, 9 N.Y.3d 342, 348 (2007). If it makes this determination, this Court then sits as a "thirteenth juror" and "decides which facts were proven at trial." *Id.* In this position, the Court must "weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony." *People v. Romero*, 7 N.Y.3d 633, 643 (2006). Contrary to the People's contentions, a proper review of this record and an evaluation of the "conflicting inferences" drawn from the evidence adduced at trial reveals that the verdict was against the weight of the evidence.

1. <u>The People fail to address the clear dissimilarities between Mr. Mann and the assailant in the video.</u>

The People fail to rebut Mr. Mann's argument that video surveillance footage reveals striking physical differences between Mr. Mann and the robber, such that the verdict was against the weight of the evidence. More specifically, the surveillance footage displays a light-skinned perpetrator. By contrast, Mr. Mann is a black man whose skin tone, as indicated in his arrest photo and pedigree information, is significantly darker than that of the assailant in the video footage.

Indeed, Detective Shawn Johnston recorded Mr. Mann's skin tone as "dark" in his arrest report (Tr. Trans. 433), and Mr. Mann also described himself as black with medium skin tone when he provided pedigree information. (Tr. Trans. 395-97.) Further, the man in the surveillance footage appears completely bald, while Mr. Mann's arrest photo (Peo. Ex. 3), taken just five days after the robbery, revealed that Mr. Mann had substantially more hair than could possibly be grown in such a limited timeframe. (Tr. Trans. 448.)

The People rely on unfounded speculation to undermine this argument. They assert that the "video quality" of the surveillance footage somehow rendered Mr. Mann's skin tone "somewhat lighter." (Resp. Br. 23.) Yet the People introduced no evidence at trial to support this argument. In fact, the People repudiated defense counsel's arguments concerning the "mediocre quality of the video itself" and insisted in their closing argument that "you could still watch it and see what happens." (Tr. Trans. 493, 514.) In essence, the People repeatedly encouraged the jury to rely on the video surveillance footage as accurate at trial, but on appeal argue that the video was flawed in such a way that strengthens their case. This Court is "[e]powered with [a] unique factual review" when it sits as a thirteenth juror in weighing the evidence, *Bleakley*, 69 N.Y.2d at 495, and such objective evidence as video surveillance footage is ripe for reconsideration by this Court.

B. Reversal is warranted here in the interest of justice, in the vein of *People v. Kidd,* 76 A.D.2d 665 (1st Dep't 1980).

The People refuse to acknowledge that a grave injustice has been done here. Mr. Mann is simply not the person who robbed Ms. Morris, as evidenced by the following facts:

(1) video surveillance footage of the crime depicts a robber with dramatically different physical features than Mr. Mann;

(2) Ms. Morris, the sole eyewitness in this case, provided an initial description of her assailant that did not resemble Mr. Mann at the time of his arrest and then modified that description at trial;

(3) Ms. Morris's identification of Mr. Mann stemmed from the first and only photograph that she reviewed in a photo array, which the police failed to preserve;

(4) Ms. Morris's lineup identification of Mr. Mann was influenced by her prior photo identification of him, especially given police remarks indicating that the man she had identified would be in the lineup;

(5) the police staged an unduly suggestive lineup in which Mr. Mann was the only person wearing a yellow shirt, the same color shirt that Ms. Morris included in her original description of the robber; and

(6) Mr. Mann was not involved in any previous violent crimes.

In such instances where there exists a serious risk that an innocent man has been convicted, this Court may overturn a conviction in the interest of justice. *Kidd*, 76 A.D.2d at 668. More specifically, in *Kidd*, the court overturned a conviction because the record left "a very disturbing feeling that guilt has not been satisfactorily established; that there is a grave risk that an innocent man has been convicted; and that we should therefore not let his conviction stand." *Id*. Similarly, in *People v. Payne,* this Court overturned a conviction in the interest of justice after concluding "the case at bar presents a classic case of an innocent man convicted." 149 A.D.2d 542, 542 (2d Dep't 1989).

The People do not address this argument in their Response Brief at all, despite the fact that Mr. Mann's case shares many of the same seriously troublesome aspects considered in *Payne* and *Kidd*. In *Payne*, this Court reversed where the detective, among other things, "advised the complainant that the man she had selected from the second photo array would be in the lineup," because this helped to give rise to unduly suggestive identifications procedures. *Payne*, 149 A.D.2d at 543. Here, too, the police informed Ms. Morris immediately after her identification of Mr. Mann's mugshot that the police would contact her to view a lineup as soon as they had made an arrest. (H. Trans. 47.) The police even informed Ms. Morris immediately prior to the lineup that they had a suspect in custody. (H. Trans. 54.)

The *Payne* decision also noted the "gross disparity between the physical description of the perpetrator given by the complainant to the police and the defendant's actual appearance." *Payne*, 149 A.D.2d at 543. There were significant disparities between Ms. Morris's initial description of the assailant and Mr. Mann in this case as well. Finally, as in *Kidd*, this is a one-witness identification case where questions were raised as to the reliability of the complainant's identification. *Kidd*, 76 A.D.2d at 667-69.

Notably, the *Kidd* and *Payne* decisions did not hold that the verdicts were based on legally insufficient evidence or against the weight of the evidence, but nonetheless concluded that the convictions could not stand. *Id.*; *Payne*, 149 A.D.2d at 543-44. That same outcome is warranted here, where the record leaves the same disturbing feeling that an individual has been convicted – and incarcerated for a term of 10 years – for a crime that he has not committed.

For the foregoing reasons, the verdict should be overturned as against the weight of the evidence. Alternatively, the Court should reverse the conviction in the interest of justice.

POINT II

THE PRETRIAL IDENTIFICATIONS WERE UNDULY SUGGESTIVE BECAUSE THE PHOTO MANAGER VIEWING WAS UNREASONABLY CONSTRAINED; THE POLICE REMARKS AFTERWARD, AND BEFORE THE LINEUP, IMPROPERLY REINFORCED THE PHOTO IDENTIFICATION; AND THE LINEUP SINGLED OUT MR. MANN AS THE ONLY PERSON WITH A YELLOW SHIRT LIKE THE ROBBER'S, WHICH THE COMPLAINANT NOTICED.

The police's suggestive pretrial identification procedures necessitate ordering a new trial, to be preceded by an independent source hearing.

A. The photo manager mugshot viewing was unduly suggestive and preconditioned Ms. Morris to identify Mr. Mann in the lineup.

The mugshot viewing that led to Ms. Morris's initial identification of Mr. Mann was unduly suggestive. The People have the initial burden of establishing that a police-arranged identification

procedure was reasonable and lacked undue suggestiveness; only if the People meet that burden does the burden shift to the defendant to establish that the procedure was unduly suggestive. *People v. Chipp*, 75 N.Y.2d 327, 335 (1990). Here, the People cannot meet their initial burden. The photo manager generated only eight photographs of potential suspects, and Mr. Mann's photograph, which was the first of the eight generated, was the *only one* that Ms. Morris saw before she identified him as the assailant. (App. Br. 31-32.) It was unreasonable for the police to create such a small pool of candidates and to not at least encourage Ms. Morris to look at all of the photographs generated. *See People v. Holley*, 26 N.Y.3d 514, 524 (2015) (emphasizing the "sheer volume" of photographs viewed by witness and the "fair selection of photos" to dispel any inference of suggestiveness).

The People make much of the fact that Ms. Morris viewed the photograph of Mr. Mann for "less than five minutes and was 100 percent sure of her identification." (Resp. Br. 6, 39, 40, 42.) However, the fact that Ms. Morris needed to stare at a *single* photograph for five minutes before making an identification suggests her lack of certainty. At the very least, Detective Johnston should have requested that Ms. Morris review the remaining photographs, especially since, as the People concede, it "is common for photo viewings to contain more photographs." (Resp. Br. 40); *see, e.g., People v. Castello,* 176 A.D.3d 730, 731-33 (2d Dep't 2019) (700-1,000 photographs); *People v. Busano,* 141 A.D.3d 538, 541 (2d Dep't 2016) (230 photographs).

Finally, the People do nothing to dispute Mr. Mann's assertion that the photo manager mugshot viewing was presumptively suggestive because Detective Johnston failed to preserve any record of the array that was generated, even though the array consisted of only eight photographs in total. (H. Trans. 44-47); *People v. Robinson*, 123 A.D.3d 1062, 1062 (2d Dep't 2014) ("[T]he

People's failure to preserve the original photographic arrays viewed by the complainants gave rise to a presumption of suggestiveness.")

B. Improper police remarks tainted the lineup.

Mr. Mann also argues on appeal that Ms. Morris was preconditioned to select him in the lineup because Detective Johnston told her, once she had identified Mr. Mann in the mugshot viewing, that the police would contact her to view a lineup as soon as they made an arrest. (H. Trans. 47.) The police then informed her prior to the lineup that they had a suspect in custody. (H. Trans. 54.) Based on these representations, Ms. Morris was led to believe that the police arrested and included in the lineup the same person she identified in the mugshot viewing. The People simply assert that Ms. Morris was not preconditioned to select Mr. Mann and make no argument contesting that Ms. Morris was likely looking for the man she identified in the mugshot viewing, not the robber.

Rather than provide any explanation for why these unquestionably improper remarks by the police did not unduly influence Ms. Morris, the People merely cite a string of cases for the proposition that a lineup is not "automatically contaminated" by such police statements. (Resp. Br. 43.) The People's cases are easily distinguishable. In *People v. Rodriguez*, the Court of Appeals held that "the indication to the victim that the person whose photo she had chosen would be in the subsequent lineup did not present a serious risk of influencing the victim's identification…*particularly in light of the significant changes in defendant's appearance between the time of the photograph and lineup.*" 64 N.Y.2d 738, 741 (1984) (emphasis added). Here, however, Mr. Mann's appearance had not changed. *See* Hr'g Ex. 1 (photo manager mugshot of Mr. Mann) and Peo. Ex. 3 (arrest photograph of Mr. Mann). Similarly, in *People v. Johnson*, this Court held that the lineup had not been tainted where more than two months had passed between

the initial photo array and the lineup. 38 A.D.3d 569, 570 (2d Dep't 2007). Moreover, in *Johnson*, the victim's sister had separately identified the defendant. *Id.* In the present case, Ms. Morris attended the lineup only five days after the photo manager viewing, and there was no additional identification witness. Ultimately, the improper police comments likely enhanced the suggestiveness of the lineup.

C. The lineup was unduly suggestive.

The People fail to adequately address the fact that Mr. Mann was the only person in the lineup wearing a yellow shirt, the same color shirt that Ms. Morris included in her original description of her attacker. The staging of a lineup in which Mr. Mann was wearing a yellow shirt was even more unduly suggestive given that the record established that Ms. Morris repeatedly mentioned her assailant's yellow shirt. Immediately after the incident, Ms. Morris drove to a nearby police station and reported that her attacker wore a yellow shirt. (Tr. Trans. 359.) Before conducting the lineup, Detective Johnston reviewed the original complaint report, which listed a yellow t-shirt as part of Ms. Morris's description of the robber. (Tr. Trans. 27-29.) He also testified at trial that Ms. Morris informed him during an earlier interview that her attacker was wearing a yellow shirt. (Tr. Trans. 449-50.)

Despite this knowledge, Detective Johnston then staged a lineup in which Mr. Mann was the only participant wearing a yellow shirt. After Ms. Morris identified Mr. Mann in the lineup, Ms. Morris informed Officer Johnston that she recognized Mr. Mann's yellow shirt. (Tr. Trans. 363.) Indeed, in an interrogation following the lineup, the detectives informed Mr. Mann that Ms. Morris had told them that he was wearing the same yellow shirt as the assailant. (H. Trans. 68-70.)

In short, the record establishes that the yellow color of the assailant's shirt was central to Ms. Morris's description of her attacker, and, by staging a lineup in which Mr. Mann was the only

person wearing a yellow shirt, the police created an unduly suggestive identification procedure. *See People v. Cintron,* 226 A.D.2d 390, 390 (2d Dep't 1996) (lineup fillers "must be sufficiently similar to the defendant so that no characteristic or visual clue would orient the viewer toward the defendant.")

In response to this argument, the People inappropriately suggest that Mr. Mann's yellow shirt was somehow insufficiently "distinctive." (Resp. Br. 46.) Yet the two cases cited by the People holding that an article of clothing might be too common to single out a defendant are, again, distinguishable from the case at hand. In *People v. Lee*, the Fourth Department noted that although the defendant was wearing a dark jacket, an article of clothing substantially similar to the jacket described by the complainant, there were two other men in the photo array also wearing dark jackets. 207 A.D.2d 953, 954 (4th Dep't 1994). Here, Mr. Mann was the *only* lineup participant wearing a yellow shirt and thus could be singled out. In *People v. Cruz*, while a blue T-shirt was deemed a common article of clothing, the First Department also emphasized the lineup occurred more than a month after the crime, so that the passage of time would have reduced the significance of any similarity between the attire of a lineup participant and that of the described suspect. 55 A.D.3d 365, 365-66 (1st Dep't 2008). The court also noted that the witness credibly testified at the hearing that the shirt did not affect her identification. *Id.* Yet in the present case, the lineup identification occurred just five days after the crime, and, even more importantly, Ms. Morris specifically informed detectives that she recognized Mr. Mann's yellow shirt.[1]

[1] All of the other case law cited by the People actually supports Mr. Mann's argument that displaying him as the only participant in an article of clothing that prominently featured in Ms. Morris's description rendered the lineup suggestive: *People v. Owens*, 74 N.Y.2d 677, 678 (1989) (one lineup participant wearing a tan vest and a blue snorkel jacket, "which fit the description of the clothing allegedly worn by the perpetrator of the crime" rendered the lineup unduly suggestive); *People v. Sapp*, 98 A.D.2d 784, 784 (2d Dep't 1983) (the People conceded that a lineup was unduly suggestive where Appellant was the only one wearing a "lamb jacket," which figured prominently in witness's description of the robber); *People v. Lloyd*, 108 A.D.2d 873, 873 (2d Dep't 1985) (photographic viewing found suggestive where only one person wearing a t-shirt with "Brooklyn" inscribed across the front, matching complainant's description).

The People also tellingly make no effort to engage with case law cited by Mr. Mann, indicating that when only one person in a lineup wears the same clothing article as the perpetrator reportedly wore and thus can be easily singled out, courts should rule the lineup unduly suggestive. For instance, in *People v. Riddick*, the Court found a lineup unduly suggestive when a witness described a robber as wearing a striped shirt and the defendant was the only individual in the lineup wearing a striped shirt. 251 A.D.3d 517, 518 (2d Dep't 1998). Similarly, in *People v. Bady*, the Second Department found the lineup procedure unduly suggestive because the defendant was the only lineup participant wearing a red shirt, which had figured prominently in the victim's description of the perpetrator. 202 A.D.3d 440, 440 (2d Dep't 1994). As these uncontested cases illustrate, the fact that Mr. Mann was the only lineup participant wearing a yellow shirt, an article of clothing that figured prominently in complainant's descriptions of her assailant, is sufficient to render the lineup unduly suggestive.

Because of the unduly suggestive nature of the lineup and the questionable identification procured from it, the hearing court should have required an independent source hearing. Accordingly, the Court should now reverse the conviction, and order a new trial and an independent source hearing.

CONCLUSION

For the reasons stated above and in his main brief, the Court should reverse Mr. Mann's conviction and dismiss his indictment (Point I), or, in the alternative, order a new trial, to be preceded by a source hearing (Point II).

Applicant Details

First Name	**Brendan**
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Last Name	**Eng**
Citizenship Status	**U. S. Citizen**
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Address	**Address** **Street** **7 E 14Th St, Apt 407** **City** **New York** **State/Territory** **New York** **Zip** **10003-3117** **Country** **United States**
Contact Phone Number	**4158675909**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2013**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 1, 2019**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Journal of Asian Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Frankel, Breana
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D'Avino, Rick
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

BRENDAN ENG
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Dear Judge Vitaliano:

I am a 2019 graduate of Columbia Law School and a third-year associate in Davis Polk & Wardwell's litigation department. I write to apply for a clerkship in your chambers for the 2022-2023 term.

I have had significant writing experience, as my requests for greater responsibility at Davis Polk have been met with the opportunity to attend depositions, research novel issues that our clients face, and draft a wide range of briefings, including an appeal to the Second Circuit and motions to dismiss, transfer, and stay. I have worked on a broad range of legal matters, including a bankruptcy matter that settled on the eve of trial, white collar investigations, antitrust, securities, and the law surrounding United States Sanctions. I believe these broad experiences will serve you in your chambers.

Enclosed, please find a resume, transcripts, writing sample, and letters of recommendation from Professors Lori Damrosch (212-854-3740, Damrosch@law.columbia.edu); Rick D'Avino (203-918-5492, RickDavino@gmail.com); and Breanna Frankel (949-340-7450, Breana@bfrankellaw.com).

I welcome an opportunity to discuss my qualifications with you about this position. I can be reached at (415) 867-5909 or by email at Brendan.Eng@columbia.edu. Thank you for your time and consideration.

Respectfully,

Brendan Eng

BRENDAN ENG

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EDUCATION

COLUMBIA LAW SCHOOL, New York, NY
J.D., Harlan Fiske Stone Scholar, May 2019
Activities: *Columbia Journal of Asian Law*; International Refugee Assistance Project

UNIVERSITY OF AMSTERDAM LAW SCHOOL, Amsterdam, Netherlands
LL.M., *cum laude*, May 2019
Master's Thesis: *Ecocide, A Crime of International Concern: Why the International Criminal Court Must Act*

GEORGETOWN UNIVERSITY, Washington, DC
B.A., *cum laude*, Political Science, May 2013

EXPERIENCE

DAVIS, POLK & WARDWELL LLP New York, NY
Associate, Litigation Department October 2019 – Present
Conduct legal research and draft briefs to be filed in court, including motions to dismiss, motions to stay, and motions in *limine*. Attend offensive and defensive depositions, prepare deposition outlines, and prepare witnesses for deposition. Conduct trial preparation, including preparing witness for cross-examination at trial. Work on matters including bankruptcy, white collar investigations, antitrust, securities, and United States sanctions.

UNITED NATIONS New York, NY
Extern, Permanent Mission of the Republic of the Marshall Islands to the UN January 2019 – May 2019
Attended United Nations Security Council and United Nations General Assembly meetings on behalf of the Marshall Islands as a diplomat. Prepared the Marshall Islands' strategy for its successful bid to become elected as a member of the United Nations Human Rights Council.

UNITED STATES ATTORNEY'S OFFICE, EASTERN DISTRICT OF NEW YORK New York, NY
Extern, National Security and Cybercrimes Division January 2018 – May 2018
Drafted research memoranda for cases in Federal District Court and the Second Circuit Court of Appeals. Two such cases involved a Mexican drug lord who was extradited to the United States and a lawyer who aided a pharmaceutical executive to commit fraud. Performed bail arguments on behalf of the U.S. Attorney's Office. Wrote a brief for a motion to suppress evidence for a hypothetical case and argued before a federal judge.

THE HONORABLE WILLIAM ALSUP, U.S.D.C., NORTHERN CALIFORNIA San Francisco, CA
Judicial Extern May 2017 – August 2017
Researched constitutional issue of first impression for a case involving the misappropriation of trade secrets to engineer autonomous cars. Drafted orders on motions after analyzing the briefs of opposing parties and thoroughly researching case law. Observed hearings and wrote memoranda detailing relevant law.

USC GOULD SCHOOL OF LAW Los Angeles, CA
Research Assistant to Professor Sam Erman May 2017 – August 2017
Edited Professor Erman's book regarding the shifting meaning of the Fourteenth Amendment for Puerto Ricans after annexation by the United States. Analyzed arguments to ensure clarity and performed citation checks.

ADDITIONAL INFORMATION

Admissions: New York
Languages: Spanish (basic)
Interests: Eagle Scout; Brewing beer and mead; podcasts; billiards; and producing travel videos

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

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COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Brendan Philip Eng
SSN#: XXX-XX-9050
SCHOOL: SCHOOL OF LAW

DEGREE(S) AWARDED: DATE AWARDED:
Juris Doctor (Doctor of Law) May 22, 2019 PROGRAM: LAW

PROGRAM TITLE: LAW

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
HARLAN FISKE STONE SCHOLAR-SECOND YEAR ENDING MAY 18				
PARKER SCHOOL RECOGNITION				
GRANTED 2 RESIDENCE TERMS & 32 ACADEMIC POINTS				
TOWARD THE JD DEGREE REQUIREMENT FOR WORK COMPLETED				
AT UNIVERSITY OF SOUTHERN CALIFORNIA, 2016-2017				
GRANTED 1 RESIDENCE TERM & 12 ACADEMIC POINTS TOWARD				
THE JD DEGREE REQUIREMENT FOR WORK COMPLETED UNDER				
THE AUSPICES OF THE GLOBAL ALLIANCE PROGRAM WITH				
UNIVERSITY OF AMSTERDAM - LAW SCHOOL, FALL 2018				
MANDATORY PRO BONO, 40 HOURS				
		Fall 2017		
LAW	L 6256	FEDERAL INCOME TAXATION	4.00	A-
LAW	L 6269	INTERNATIONAL LAW	3.00	A-
LAW	L 6425	FEDERAL COURTS	4.00	B+
LAW	L 6615	JOURNAL OF ASIAN LAW REVI	0.00	CR
LAW	L 8890	S NAT'L SECURITY INVEST &	2.00	B+
		Spring 2018		
LAW	L 6231	CORPORATIONS	4.00	A
LAW	L 6238	CRIMINAL ADJUDICATION	3.00	B+
LAW	L 6276	HUMAN RIGHTS	3.00	B+
LAW	L 6615	JOURNAL OF ASIAN LAW	0.00	CR
LAW	L 8005	EXTERNSHIP: US ATTORNEY'S	2.00	CR
LAW	L 8005	EXTERNSHIP: US ATTORNEY'S	2.00	CR
		Fall 2018		
LAW	L 6675	MAJOR WRITING CREDIT	0.00	CR
STAB	L 0007	ALLIANCE PROGRAM-AMSTERDA	12.00	CR
		Spring 2019		
LAW	L 6241	EVIDENCE	4.00	A-
LAW	L 6274	PROFESSIONAL RESPONSIBILI	2.00	A-
LAW	L 6683	SUPERVISED RESEARCH PAPER	3.00	A
LAW	L 8941	C INTERNATIONAL CRIMINAL	2.00	CR
LAW	L 9002	EXTERNSHIP: UNITED NATION	2.00	A-
LAW	L 9002	EXTRNSHP:UNITED NATIONS-F	3.00	CR

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Associate Vice President and University Registrar

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SEAL OF COLUMBIA UNIVERSITY
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Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session
A, **B**, **C**, **D**, **F** (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

American Language Program, Center for Psychoanalytic Training and Research, Journalism
P (pass), **F** (failing). Grades of **A**, **B**, **C**, **D**, **P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

Architecture
HP (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A**, **B**, **C**, **D**, **F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

Arts
P (pass), **LP** (low pass), **F** (fail). **H** (honors) used prior to June 2015.

Business
H (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for H, HP and P1 grades Summer 2010 and thereafter.

College of Physicians and Surgeons
H (honors), **HP** (high pass), **P** (pass), **F** (failing).

College of Dental Medicine
H (honors), **P** (pass), **F** (failing).

Law
A through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing). **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.
E (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format – i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

Public Health
A, **B**, **C**, **D**, **F** - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

Social Work
E (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).
A though **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

OTHER GRADES USED IN THE UNIVERSITY

AB = Excused absence from final examination.

AR = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

AU = Audit (auditing division only).

CP = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

F* = Course dropped unofficially.

IN = Work Incomplete.

MU = Make-Up. Student has the privilege of taking a second final examination.

R = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

R = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

R = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

R = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

UW = Unofficial Withdrawal.

UW = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

W = Withdrew from course.

YC = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

OTHER INFORMATION

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of P (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of **A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A** (**A+**, **A**, **A-**) range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

*The **capital letter** indicates the University school, division, or affiliate offering the course:*

A	Graduate School of Architecture, Planning, and Preservation
B	School of Business
BC	Barnard College
C	Columbia College
D	College of Dental Medicine
E	School of Engineering and Applied Science
F	School of General Studies
G	Graduate School of Arts and Sciences
H	Reid Hall (Paris)
J	Graduate School of Journalism
K	School of Library Services/Continuing Education (effective Fall 2002)
L	School of Law
M	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytical Training and Research
N	School of Nursing
O	Other Universities or Affiliates/Auditing
P	School of Public Health
Q	Computer Technology/Applications
R	School of the Arts
S	Summer Session
T	School of Social Work
TA-TZ	Teachers College
U	School of International and Public Affairs
V	Interschool Course
W	Interfaculty Course
Y	Teachers College
Z	American Language Program

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*The **first digit** of the course number indicates the level of the course, as follows:*

0	Course that cannot be credited toward any degree
1	Undergraduate course
3	Undergraduate course, advanced
4	Graduate course open to qualified undergraduates
5	Graduate course open to qualified undergraduates
6	Graduate course
7	Graduate course
8	Graduate course, advanced
9	Graduate research course or seminar

Note: Level Designations Prior to 1961:
1-99 Undergraduate courses
100-299 Lower division graduate courses
300-999 Upper division graduate courses

The term designations are as follows:
X=Autumn Term, Y=Spring Term, S=Summer Term
Notations at the end of a term provide documentation of the type of separation from the University.

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Record of: Brendan Philip Eng
ID:: 805911619

Date of Birth: 21-Dec

Course Level: Undergraduate

High Schools Attended:
LICK WILMERDING HIGH SCHOOL
SAN FRANCISCO CA

Degrees Awarded:
Bachelor of Arts May 18, 2013
Georgetown College
Major: Government
Minor: Business Administration
Rank: 353 of 907
Degree GPA: 3.636
Honors: Cum Laude

Transfer Credit: Aug 2009 - May 2010
George Washington University

Single-Variable Calculus I	3.00
Introduction to Philosophy	3.00
General Psychology	3.00
Measuring Uncertainty	3.00
University Writing	4.00
Principles of Economics-Micro	3.00
Single-Variable Calculus II	3.00
General Physics I	4.00
Abnormal Psychology	3.00
Intermediate Spanish I	3.00
School Total:	32.00

Transfer Credit:
Advanced Placement

World History	3.00
School Total:	3.00

Entering Program:
Georgetown College
Bachelor of Arts
Major: Political Economy

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2010						
ENGL	042	Gateway:Mod &/Or Post-Modern	3.00	A-	11.01	
GOVT	008	US Political Systems	3.00	A-	11.01	
LING	001	Intro to Language	3.00	A	12.00	
SPAN	022	Intermediate Spanish II	3.00	A	12.00	
THEO	011	Intro to Biblical Literature Dean's List	3.00	B	9.00	

Program Changed to:
Major: Government

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2011						
ECON	002	Econ Principles Macro	3.00	A-	11.01	
ENGL	193	19c US Lit:Class/Amer Dream	3.00	A-	11.01	
GOVT	006	International Relations	3.00	B-	8.01	
THEO	043	The Church in the 21st Cent	3.00	A-	11.01	

----------Continued on Next Column----------

Subj	Crs	Title	Crd	Grd	Pts	R
Summer 2011						
SABR	125	GU/Sum, Quito, Ecuador(Natr/Cl	0.00	.	0.00	
SPAN	111	Intensive Advanced Spanish I	5.00	A	20.00	
SPAN	275	Ecuador:Cult/Hist/Politics	1.00	A	4.00	
SPAN	288	Nature/Culture in LA Interm	3.00	A	12.00	
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
Fall 2011						
GOVT	117	Elements of Political Theory	3.00	B+	9.99	
GOVT	121	Comparative Political Systems	3.00	A-	11.01	
HIST	170	History of Russia I	3.00	A-	11.01	
MARK	220	Principles of Marketing	3.00	A-	11.01	
MGMT	201	Management & Org Behavior	3.00	A-	11.01	
OPIM	170	Computational Busn Model Dean's List	1.00	S	0.00	
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
Spring 2012						
ACCT	101	Accounting I	3.00	A	12.00	
GOVT	241	Public Affairs Internship & Se	4.00	A	16.00	
GOVT	424	Dept Sem:Contemp.Consrv.Thgt	3.00	A-	11.01	
PHIL	105	Ethics: Bioethics Second Honors	3.00	B+	9.99	
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
Fall 2012						
ACCT	102	Accounting II	3.00	B+	9.99	
GOVT	415	Contemp US Foreign Policy	3.00	B+	9.99	
GOVT	476	Dept Sem:Problem of Dem Theory	3.00	A	12.00	
STRT	282	Social Responsibility of Bus	3.00	B	9.00	
Subj	**Crs**	**Title**	**Crd**	**Grd**	**Pts**	**R**
Spring 2013						
FINC	211	Business Financial Management	3.00	A	12.00	
INAF	453	Amer Natl Security Tool Box	3.00	B+	9.99	
TPST	120	Acting I	3.00	A-	11.01	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	9.00	9.00	33.00	3.666
Cumulative	121.00	85.00	309.07	3.636

End of Undergraduate Record

UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW

Record of Academic Performance

Student Name:	**Eng, Brendan, P.**	**Date:**	**June 30, 2017**
Student ID:	**5795-25-5793**	**Pages:**	**Page 1 of 1**

Cumulative Totals

Units Attempted:	32.0	GPA Units:	32.0		
Units Earned:	32.0	Grade Points:	113.90	GPA:	3.55

Fall Semester 2016 **(8/22/2016 to 12/16/2016)**

Course	Grade	Letter Grade Equivalent	Units	Title	Instructor
LAW-502	3.5	A-	4.0	Procedure I	Rich
LAW-503	3.3	B+	4.0	Contracts	Rasmussen
LAW-508	3.6	A-	3.0	Constitutional Law: Structure	Cruz
LAW-512	3.5	A-	2.0	Law, Language, and Values	Klerman
LAW-515	3.5	A-	3.0	Legal Research, Writing, and Advocacy I	Frankel

Units Attempted:	Units Earned:	GPA Units:	Grade Points:	Term GPA:
16.0	16.0	16.0	55.50	3.46

Spring Semester 2017 **(1/9/2017 to 5/15/2017)**

Course	Grade	Letter Grade Equivalent	Units	Title	Instructor
LAW-504	3.9	A	3.0	Criminal Law	Ryo
LAW-507	3.8	A	4.0	Property	Altman
LAW-509	3.4	B+	4.0	Torts I	Bice
LAW-516	4.0	A	2.0	Legal Research, Writing, and Advocacy II	Frankel
LAW-530	3.3	B+	3.0	Fundamental Business Principles	Chasalow

Units Attempted:	Units Earned:	GPA Units:	Grade Points:	Term GPA:
16.0	16.0	16.0	58.40	3.65

End of Record

January 18, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am writing this letter on behalf of Brendan Eng, who is applying for a clerkship in your chambers. By way of introduction, I taught Legal Writing and Analysis at the University of Southern California Gould School of Law as an adjunct professor from 2015 to 2019. Prior to that, I taught LRW full-time at Chapman University School of Law and then worked as an attorney at the United States District Court for the Central District of California for seven years. I am now a solo practitioner, specializing in criminal post-conviction practice. I also teach various legal writing courses as a part-time professor at Chapman Law School.

Brendan was in my Legal Writing and Analysis class at USC during the 2016-2017 term. Brendan earned an A-in my class during the fall semester and an A in the spring semester, when he received the highest score in the class. I wrote Brendan a letter of recommendation when he transferred from USC to Columbia Law School.

I had the opportunity to observe Brendan's work over the course of a year-long class. I am familiar with his legal writing, have observed him in oral argument, and worked with him in a one-on-one setting during my office hours. Brendan has strong written and oral communication skills. Both inside and outside of class, he was always well-prepared and eager to get the most out of his legal education. He was able to accept constructive criticism and use it to improve his legal writing and reasoning skills. He has a strong work ethic and a positive outlook.

I believe that Brendan would be a valuable addition to your chambers. Having both clerked and worked as a staff attorney in a federal court for many years, I understand the importance in hiring clerks both with strong writing skills and who will contribute to a collegial working atmosphere. I believe that Brendan would be a genuine asset to your chambers in each of those areas.

If you have any further questions regarding Brendan's qualifications, please do not hesitate to contact me.

Sincerely,

Breana Frankel
The Law Offices of Breana Frankel
28202 Cabot Road Suite 300
Laguna Niguel, CA 92677
breana@bfrankellaw.com
(949)340-7450

January 25, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

I am pleased to provide a letter of recommendation in strong support of Brendan Eng, who is an applicant for a clerkship in your chambers. Brendan received the JD degree from Columbia in 2019, and I worked with him quite closely in several capacities during his third year of law school. I believe he has all of the qualities for an excellent law clerk, and I commend him to you with enthusiasm.

Brendan Eng transferred to Columbia Law School from the University of Southern California Gould School of Law where he had compiled an impressive record in his first year. Upon arrival at Columbia, he pursued a course of study combining his interests in criminal law and international law – the latter being my own area of expertise. During his 2L year he applied for, and was accepted into, one of Columbia Law School's joint degree programs with an overseas partner, the University of Amsterdam, in the field of international criminal law. Successful participants in this program receive a master's degree (LLM) in international criminal law from the University of Amsterdam after completion of their JD degree, on the basis of a curriculum at the two schools which requires them to take certain prescribed courses and to select from a menu of approved electives in the areas of criminal law and international law, and also to submit a high-quality master's thesis. I am the academic director of the international criminal law program on the Columbia side, and in that capacity I co-supervised Brendan's master's thesis over the course of two semesters (fall 2018 and spring 2019), and I supervised him in the required Colloquium on International Criminal Law in the spring 2019 semester. Against that background – and bearing in mind that over the course of his three years in law school he has studied at three different law schools (USC, Columbia, and Amsterdam) – I believe I am as well-positioned as any of his professors to attest to his high qualifications for your clerkship.

Brendan reached out to me in summer 2018 to enlist me to supervise his Amsterdam thesis, in order to satisfy his JD Major Writing requirement (L6675, for which he registered in fall 2018) and also to fulfill his Amsterdam program requirements under the heading of Supervised Research Paper with three points of graded Columbia credit (L6683, for which he registered in spring 2019). The thesis went through an iterative process of joint supervision by one professor from Columbia (myself) and one professor from Amsterdam (Jill Coster van Voorhout). Brendan and the two co-supervisors agreed on a topic involving criminal responsibility for serious environmental damage (ecocide), and we established a series of deadlines to ensure completion of all requirements for both the Columbia JD and the Amsterdam LLM in good time. He met and indeed exceeded all expectations, in terms of the intellectual ambitions of the project, timeliness of submissions, thoroughness of research, and quality of written work for the final product.

The result was an outstanding thesis, with the title "Ecocide, the Most Serious Crime of International Concern: Why the International Criminal Court Must Act," which received the highest grade of any of the submissions in the joint program in 2019, namely "A" in the Columbia system (recorded under L6683: Supervised Research Paper) and "8.5" in the numerical rankings awarded by Amsterdam (under their conversion formula for American letter grades). The evaluation (prepared with my concurrence) included the following observations from his Amsterdam supervisor, who had final responsibility on signing off on the master's thesis for purposes of the award of Amsterdam's LLM degree: "Well-researched, well-written. ... make a well-documented and well-argued case for much needed changes and urgent responses to developments such as the trends you combine under the label ecocide .... To conclude, I would like to congratulate you on this interesting and high quality thesis."

Along with the Major Writing Credit-Supervised Research Paper-Amsterdam LLM thesis during the 2018-2019 academic year, I also had the opportunity to engage with Brendan regularly in person in the spring 2019 semester. We met weekly within the framework of the Colloquium on International Criminal Law (L8941), which is a required course for the students in the Amsterdam joint program and also open to other upper-level JD and LLM students. A total of twenty-one students participated in the Colloquium in spring 2019, which was conducted in seminar format to discuss papers and presentations by experts in the field of international criminal law and LLM works-in-progress. Students were expected to read all the papers, to come to all sessions prepared for interactive discussion, and to submit a series of reflection papers on the topics considered. Brendan was one of the most active and insightful participants in this group. He regularly offered thoughtful comments on the speakers' presentations, and he also enriched our understanding of international criminal law by presenting his own research on ecocide at one of the sessions. I was also favorably impressed with his reflection papers on a diverse range of topics, including the crime of aggression; the prosecutions at the Extraordinary Chambers of the Courts of Cambodia; the African trial of the former ruler of Chad, Hissène Habré in an innovative process in Senegal; and the terrorism proceedings and detentions at Guantánamo of suspects in the attacks of September 11, 2001. Grading for the Colloquium was on a credit-fail basis and thus there was not a mechanism to recognize on his transcript the very high quality of his performance on all these components of the course requirements. I can assure you, however, that in all of the skills of research, writing, and oral participation expected in an advanced law seminar, he performed extremely well.

Through the international criminal law program and otherwise in his course selections in law school, Brendan has thorough

Lori Damrosch - damrosch@law.columbia.edu - 212-854-3740

command of U.S. domestic criminal law and procedure. During his time at Columbia, he had a semester-long externship with the Office of the United States Attorney for the Eastern District of New York in the national security and cybercrimes division and by virtue of that experience he consolidated his knowledge of criminal practice in the U.S. federal system. He has studied criminal adjudication, as well as federal courts, evidence, and other major subjects for the federal docket.

In light of Brendan's unique trajectory through three different law schools in three years, I would like to make some further observations to allow you to see between the lines of his transcript. As a transfer student from another U.S. law school and as a participant in one of our study-abroad programs, the only year that he was eligible to earn Columbia Law School's academic honors was his 2L year, when he achieved honors at the Harlan Fiske Stone Scholar level. This is the bracket of the class eligible for competitive clerkships, which he indeed deserves. His grades for his final semester were all in the "A" family, thereby confirming his consistently strong academic performance. He also received recognition at graduation from Columbia's Parker School, which is awarded to students for their accomplishments in the field of international and comparative law. I am a mentor to many such students and can affirm that Brendan merits consideration along with the best of them on all dimensions relevant to a clerkship.

After receiving his Columbia JD and Amsterdam LLM degrees, Brendan passed the New York bar exam and joined the litigation department of Davis, Polk & Wardwell in New York City. He is gaining litigation experience which will stand him in good stead in a clerkship. He also had the opportunity between his first and second years of law school to have a summer externship with Judge William H Alsup of the U.S. District Court for the Northern District of California. That experience inspired him to think of public service for future installments of his legal career. He wrote to me (and perhaps has likewise written to you) that he would take great pride, as the first lawyer in his immigrant family, to have the opportunity to serve again in a United States court.

In short, Brendan Eng has all the qualities you would wish to have in a law clerk. I encourage you to invite him for an interview and offer him a clerkship in your chambers.

Should you wish to be in telephone contact for further elaboration of Brendan's qualifications, I would be glad to speak at your convenience. Due to the pandemic, I may not be picking up the telephone at the letterhead address but will try to keep my voicemail greeting updated as appropriate and could call you or your chambers as you prefer. Please feel free to let me know if I may provide further information about this well-qualified candidate.

Sincerely yours,

Lori Fisler Damrosch

Lori Damrosch - damrosch@law.columbia.edu - 212-854-3740

Columbia Law School
435 West 116th Street
New York, NY 10027

January 27, 2021

Dear Judge:

I am writing in enthusiastic support of Brendan Eng's application for a clerkship with you.

Brendan was a student in my Tax Law 1 class at Columbia Law School during the Fall 2017 semester. Since 1981, I have taught many courses … at Georgetown, Penn and Columbia … and Brendan distinguished himself as an especially bright, insightful and inquiring student.

Brendan amplified his outstanding classroom performance with a wonderfully written exam, graded in a law-school standard anonymous manner and on the strict CLS curve. I was not surprised, and very pleased, when I learned that Brendan's exam earned a strong "A-." (The exam was a difficult one, requiring the full range of skills: organization, quick thinking, legal knowledge, the ability to apply the law to complex facts and writing skill.)

As a result of my semester with Brendan, and my own experience clerking for Judge Alvin Rubin on the U.S. Court of Appeals for the Fifth Circuit, I am totally confident that he has the whole package — a superb intellect, an inquiring, thoughtful and insightful mind, wonderful analytical skills, and an ability to perform exceptionally well under pressure. I have no doubt that Brendan will be a valuable addition to your chambers.

In summary, I recommend Brendan Eng enthusiastically and without qualification. Please feel free to call me at 203-918-5492, if you would like to discuss Brendan's application in greater depth.

Thank you.

Sincerely yours,

Rick D'Avino
Lecturer in Law
Columbia University

BRENDAN ENG
7 East 14th Street, Apt. 407
New York, NY 10003
Brendan.Eng@columbia.edu • (415) 867-5909

This writing sample is an excerpt of an appeal brief that my Davis Polk team filed with the Second Circuit in a case involving the Hague Convention on the Civil Aspects of International Child Abduction. While the members of my team contributed edits to the brief, I conducted the legal research and drafted the brief in its entirety in the first instance. The members of my team agreed that I may submit this as my writing sample.

Thank you for your consideration.

Brendan Eng
Writing Sample

BACKGROUND

Ms. Clarke, the Appellant, is the biological mother of TKI and KMLT, the two children at issue in this proceeding. Mr. Trott, the Appellee, is the biological father of KMLT but is not the biological father of TKI, nor does he allege to be her adoptive father. Ms. Clarke and Mr. Trott married in Bermuda, where Petitioner is a citizen.

Ms. Clarke, TKI, and KMLT lived in Bermuda until Ms. Clarke and Mr. Trott separated in September 2011, at which point Ms. Clarke, TKI, and KMLT moved to New York. Ms. Clarke and Mr. Trott agreed that Mr. Trott was welcome to visit with TKI and KMLT in New York, and that the children would visit Mr. Trott annually in Bermuda.

In the summer of 2018, TKI and KMLT visited Petitioner in Bermuda. The visit was intended to be a temporary "vacation" that was "in keeping with established arrangements." While in Bermuda, Petitioner learned of an incident that had occurred in May 2018 involving a classmate's father who engaged in inappropriate touching, including attempts to hug and kiss the children during a playdate, for which he was incarcerated. At the end of the summer, Mr. Trott refused to return TKI and KMLT to New York on the basis that the children objected to and would be harmed by returning.

On October 2, 2018, the United States Department of State submitted a request to the Attorney General of Bermuda to secure the return of TKI and KMLT to the United States. The Attorney General of Bermuda filed a Hague Convention application in the Bermuda Supreme Court, naming Mr. Trott as the respondent.

On May 20, 2019, the Bermuda Supreme Court ordered that TKI and KMLT be returned to the United States on an expedited basis. Mr. Trott appealed the decision to the Bermuda Court of Appeal, which overturned the Bermuda Supreme Court's decision, stating that it did not give

sufficient weight to the children's objections and granted interim custody to Mr. Trott in Bermuda.

In December of 2019, Mr. Trott and Ms. Clarke agreed to have TKI and KMLT travel from Bermuda to New York to visit Ms. Clarke for the winter holidays. Following the visit, Ms. Clarke did not return the children to Bermuda.

On March 16, 2020, Mr. Trott filed a petition for return of the children to Bermuda, pursuant to the Hague Convention in the United States District Court for the Eastern District of New York. The District Court concluded that the Bermuda Court of Appeal's decision was entitled to comity.

ARGUMENT

I. The District Court Erred by Granting Comity to the Bermuda Court of Appeal Decision

Although decisions of foreign courts are typically subject to deference as a matter of comity, the standard for determining whether a foreign decision under the Hague Convention is entitled to comity is comparatively rigorous, as it involves a "more searching inquiry into the propriety of the foreign court's application of the Convention, in addition to [] considerations of due process and fairness." *Asvesta v. Petroutsas*, 580 F.3d 1000, 1013 (9th Cir. 2009); *see also Diorinou*, 237 F.3d 133, 143 (2d Cir. 2001) (noting that "careful consideration" was warranted "of the determinations [under the Convention] in [the foreign country] to which [petitioner] asks us to defer").

As the District Court recognized, a United States court "may properly decline to extend comity to [a foreign] determination if it clearly misinterprets the Hague Convention, contravenes the Convention's fundamental premises or objectives, or fails to meet a minimum standard of reasonableness." *Asvesta*, 580 F.3d at 1014; A226; *see also Carrascosa v. McGuire*, 2007 WL

496459, at *9 (D.N.J. Feb. 8, 2007), *aff'd*, 520 F.3d 249 (3d Cir. 2008) (declining to afford comity to a foreign Hague decision because of its "total failure" to determine rights of custody under "the law of the state in which [the child] was habitually resident immediately before her removal"). The District Court erred in its application of that standard here.

A. The District Court Failed to Adequately Consider that Mr. Trott's Lack of Custodial Rights to TKI Under New York Law Provided Incentive for Forum Shopping

The District Court's determination that it would grant comity to the Bermuda Court of Appeal decision as to TKI ignored the manner in which Mr. Trott's retention of TKI effectuated an end-run around New York law and undermined the Convention's objective of deterring parties from retaining children in foreign countries in order to secure a jurisdictional advantage.

It was undisputed in the Bermuda proceedings—and Mr. Trott did not dispute before the District Court—that the children were both habitually resident in the United States in September 2018, when Mr. Trott wrongfully retained them in Bermuda. As a result, the Convention required the Bermuda courts to apply the relevant United States law to determine whether the children were retained in violation of their mother's custodial rights. *See, e.g.*, *Asvesta*, 580 F.3d at 1017 ("[T]he law of the habitual residence is used to determine whether the petitioning party has custody rights to the child . . . ."); *Mohásci v. Rippa*, 346 F. Supp. 3d 295, 315 (E.D.N.Y. 2018) (same). There was no question that Ms. Clarke had custodial rights to her children (and that they were wrongfully retained by Mr. Trott in violation of those rights), as she is the biological mother of both TKI and KMLT.

Under the law of New York, where the children lived before they left for their temporary visit to Bermuda in the summer of 2018, Mr. Trott did not have *any* custodial rights over TKI because he is neither TKI's biological nor adoptive parent, TKI was born *before* Petitioner and

Respondent were married, and he played no role in planning TKI's conception.[1] By retaining TKI in Bermuda, Mr. Trott was able to evade those limitations on his right to petition for custody in New York, while taking advantage of the fact that he had custodial rights over TKI under Bermuda law. Thus, as a direct result of his admittedly wrongful retention of TKI, Mr. Trott secured a clear jurisdictional advantage.

By failing to give any consideration whatsoever to Mr. Trott's lack of custodial rights over TKI under New York law, the Bermuda decision contravened one of the fundamental objectives of the Convention: "ensur[ing] that rights of custody and access under the law of one Contracting State are effectively respected in other Contracting States." Hague Convention art. 1(b).

Indeed, the Bermuda Court of Appeal's decision effectuated an end run around New York law. It granted Mr. Trott the opportunity to obtain a favorable custody determination in Bermuda (before a court applying Bermuda law) as a result of his wrongful retention, even though he did not even have standing to seek—and thus could never obtain—custody of TKI in New York.

That result is plainly contrary to and undermines the objectives of the Convention, which seeks to "deter family members from removing children to jurisdictions more favorable to their custody claims in order to obtain a right of custody from the authorities of the country to which the child has been taken." *Gitter v. Gitter,* 396 F.3d 124, 129-30 (2d Cir. 2005); *see also Abbott v. Abbott*, 560 U.S. 1, 20 (noting "the Convention's purpose of deterring child abductions by parents who attempt to find a friendlier forum for deciding custodial disputes"). Ms. Clarke was

[1] Under New York law, Mr. Trott would not have had standing to seek a custody or visitation order, let alone a legal basis to exercise any such rights. *See* N.Y. Dom. Rel. Law § 70 (stating that only a "parent" may petition for custody or visitation).

deprived of custody of her biological daughter (who is not even a citizen of Bermuda) in favor of an individual who has no custodial rights whatsoever, *except* for the "right" that he himself manufactured by wrongfully retaining TKI in Bermuda against Ms. Clarke's wishes and obtaining an order in Bermuda granting him interim care and control.

The District Court dismissed Mr. Trott's jurisdictional gamesmanship on the basis that Ms. Clarke "engaged in gamesmanship of her own" by seeking custody of the children after she retained the children in New York in January 2020. But Ms. Clarke's actions are simply not analogous. Her retention of the children in the United States in no way effectuated a jurisdictional advantage of the type that Mr. Trott secured by retaining the children in Bermuda in September 2018, as Ms. Clarke indisputably had standing to pursue custody in either jurisdiction since she is the biological mother of both children. And in any event, whatever actions Ms. Clarke took *after* the Bermuda Court of Appeal decision was issued have no bearing on the merits of that decision—and whether it is entitled to comity—in the first instance.

B. The District Court Failed to Recognize that the Bermuda Court of Appeal Misapplied the Convention in Its Analysis of the Children's Purported Objections to Return

Under Article 13 of the Convention, a court "*may* [] refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views." (emphasis added). But courts retain discretion to nevertheless issue a return order even where an Article 13 defense is established "if return would further the aims of the Convention." *Blondin v. Dubois*, 189 F.3d 240, 246 n.4 (2d Cir. 1999) ("*Blondin II*").

In adjudicating an Article 13 defense based on a child's objection, a court must consider the age and maturity of the child and assess the merits of the specific reasons that the child

voices for not wanting to return to her country of habitual residence. "[C]ourts distinguish between a child's 'objection' to return, as referenced in the Hague Convention, and a child's wishes, as expressed in a custody case . . . . [T]he notion of 'objections' . . . is far stronger and more restrictive than that of 'wishes' in a custody case." *Haimdas v. Haimdas,* 720 F. Supp. 2d 183, 206 (E.D.N.Y.), *aff'd*, 401 F. App'x 567 (2d Cir. 2010). For example, "courts give the child's wishes less weight when they stem from a preference for one parent over the other." *Rubio v. Castro,* 2019 WL 5189011, at *20 (E.D.N.Y. 2019), *aff'd,* 2020 WL 2311897 (2d Cir. May 11, 2020). Likewise, a mere preference to live in one country does not amount to an objection to return. *See Rodriguez v. Yanez,* 817 F.3d 466, 476-77 (5th Cir. 2016).

Moreover, where concerns expressed by a child are unfounded—including concerns of abuse or neglect—the child objection exception does not apply and does not establish a defense to a return order. *See Haimdas,* 720 F. Supp. 2d at 209 (finding that unfounded allegations of mistreatment by one parent, among other concerns, were insufficient to "disregard the narrowness of the age and maturity exception to the Convention's rule of mandatory return"); *Garcia v. Pinelo,* 122 F. Supp. 3d 765, 784-85 (N.D. Ill. 2015) (declining to defer to an objection to return "premised almost entirely on [a child's] concern about his or his mother's ability to travel to and from Mexico" where it was likely that the mother would receive valid immigration status). Thus, courts are required to scrutinize the specific objections raised by a child to his or her return.

Like all Article 13 defenses, the child objection exception is narrowly construed to avoid "frustrat[ing] a paramount purpose of [the Convention]—namely, to preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court."

Blondin II, 189 F.3d at 246; *Souratgar v. Lee*, 720 F.3d 96, 102 (2d Cir. 2013) (same).[2] This is especially true where a child's wishes constitute the sole basis for denying a petition. *See de Silva v. Pitts*, 481 F.3d 1279, 1286 (10th Cir. 2007) ("A court must apply a stricter standard in considering a child's wishes when those wishes are the sole reason underlying a repatriation decision and not part of some broader analysis."); *Blondin v. Dubois*, 238 F.3d 153, 166 (2d Cir. 2001) (same). A child's aversion to strict parenting and a preference to reside in a tropical climate were not grounds that the drafters of the Hague Convention envisioned to mount an Article 13 defense.[3]

Separately, Article 13 of the Convention also establishes a "grave risk" exception, whereby a court is not bound to return a child if a "return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." To establish grave risk, "[t]he potential harm to the child must be severe, and '[t]he level of risk and danger required to trigger this exception has consistently been held to be very high.'" *Souratgar*, 720 F.3d at 103. "The grave risk involves not only the magnitude of the potential harm but also the probability that the harm will materialize." *Id.* This exception is also subject to a heightened

[2] *See also* Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, 28 Fam. L.Q. 9, 30-31 (1994) ("The tendency of courts to minimize the wishes of the child is justified in the particular context of a Hague petition. The only question in the Hague action is whether or not the child should be returned for purposes of further custody litigation and reflects a desire not to have the court in the jurisdiction to which the child has been removed involve itself in what are inevitably the merits of the case.").

[3] The Bermuda Court of Appeal took into account objections based on prior inappropriate sexual touching by a classmate's father and TKI's allegations of mistreatment by her mother (which were *not* raised by KMLT), including instances of alleged discipline and neglect. Although KMLT additionally stated that she did not wish to return to New York because it was "boring" and she "wished" her mom would "be better," that objection is clearly insufficient to deny a return order. *See Rubio*, 2019 WL 5189011, at *20 (courts "discount objections that are based more on a child's fancy rather than concerns of the future").

standard of proof as compared to the child objection defense under United States law. Whereas the child objection defense "must be proven by a preponderance of the evidence," grave risk "must be established by clear and convincing evidence." *In re D.T.J.*, 956 F. Supp. 2d 523, 528 (S.D.N.Y. 2013); 22 U.S.C. § 9003 (e)(2).

The objections raised by one or both children were limited to certain allegations of abuse and neglect that either did not involve Ms. Clarke or that were otherwise untested;[4] and, in any event, they were found to be insufficient to establish grave risk under Article 13(b). For example, the concerns regarding the classmate's father were premised entirely on a single historical incident (for which Ms. Clarke bore no responsibility and which she had addressed appropriately), and there was no evidence that any harm "*will materialize*" in the future or that the children would be put in an intolerable situation on that basis if they were to return to the United States. *Souratgar*, 720 F.3d at 103 (emphasis added).[5]

TKI's separate disciplinary allegations (*not* raised by KMLT) described "historical incidents" that were insufficient to rise to the level of grave risk, and, in any event, there was no evidence that ameliorative measures would be insufficient to protect the children.[6] A148 ¶

[4] The New York City Administration for Children's Services concluded that "Ms. Clarke *is* able to meet [her children's] basic needs for food, shelter, and supervision" and that TKI and KMLT "are not afraid of their mother and *deny that their mother hits them* as a form of punishment" (emphasis added).

[5] Immediately after learning of that event, Respondent filed a police report and took steps to protect the children, and neither the children nor the Welfare Report indicated that there were any concerns whatsoever about such events occurring again in the future.

[6] The Bermuda Court of Appeal's reliance on the letters purportedly written by the children raises concerns given the lack of inquiry into how they were created. Courts "must be attentive to the possibility that the children's views may be the product of 'undue influence' of the parent" they are with. *Walker v. Walker*, 701 F.3d 1110, 1123 (7th Cir. 2012). The District Court took no issue with the Bermuda Court of Appeal's decision to rely on those letters in reaching its conclusion.

38(g); *see also, e.g.*, *Broca v. Giron*, 2013 WL 867276, at *5 (E.D.N.Y. Mar. 7, 2013), *aff'd*, 530 F. App'x 46 (2d Cir. 2013) (no grave risk where child testified that she was hit multiple times by petitioner). Indeed, even the Bermuda Court of Appeal did not disturb the Supreme Court's conclusion that grave risk was not established, and Mr. Trott himself accepted that there was no risk of physical harm if the children returned to New York. Nevertheless, the court based its entire decision on these allegations.

In circumstances where a child's objection is based primarily on allegations of abuse or neglect (as is the case here with respect to TKI), no court in the Second Circuit has ever issued a return order on the basis of such objections where the separate grave risk exception was not independently established (and indeed, neither the District Court nor Mr. Trott could point to any such cases in the proceedings below).

To the contrary, objections concerning abuse or neglect are typically considered under the framework that applies to the grave risk exception. For example, in *Rubio v. Castro*, a child expressed objections to return based, in part, on allegations that petitioner beat him and subjected him to other forms of mistreatment. 2019 WL 5189011, at *7, *20. Although the court held that the child's objection was credible, it found that the objection "cannot, in and of itself, form the sole basis for denying the petition," especially where it determined that the grave risk exception was not satisfied. *Id.* at *21, *24-31. It therefore granted the petition for return. *Id.* at *33; *see also Haimdas*, 720 F. Supp. 2d at 207-09 (granting a return order even where the objections voiced by two children, ages 10 and 12, involved "sweeping statements regarding the mistreatment of the children by their mother," including being hit with a belt).[7] The District

[7] In contrast, courts have denied repatriation where a child's objections involved allegations of abuse or neglect, but only where the grave risk exception was also satisfied or
(….continued)

Court failed to recognize that the Bermuda Court of Appeal's analysis is manifestly inconsistent with how the Convention is applied in the United States, as it effectively nullified the heightened standard applicable to grave risk by considering such allegations through the prism of the child objection defense and the lower preponderance of the evidence standard applicable to other defenses.

Relatedly, the District Court credited the Bermuda Court of Appeal's assessment that the girls raised "reasonable" concerns about their "mother's ability to protect and care for them" without meaningfully probing the merits of those objections or grappling with the fact that it did not find these concerns to present a grave risk. *See, e.g.*, *Haimdas*, 720 F. Supp. 2d at 209; *Garcia*, 122 F. Supp. 3d at 784-85. For example, there is no separate account in the Bermuda Court of Appeal decision or in the District Court's analysis of how KMLT's objections—considered on their own—were sufficient to establish a defense to return. KMLT does not appear to have raised any objections based on allegations of improper discipline or abuse by her mother, as the Bermuda Court of Appeal itself recognized. And neither the Bermuda Court of Appeal or the District Court provided any explanation for why the isolated incident of abuse by a classmate's father, taken alone, could be a sufficient basis to refuse to return KMLT to her mother's care and her state of habitual residence, especially given that there were no allegations that Ms. Clarke bore any responsibility for those events. Thus, KMLT's objections were not sufficient to establish a valid objection to return.

(continued….)

where the child's objections included additional reasons unrelated to alleged abuse or neglect. *See, e.g.*, *Blondin v. Dubois*, 78 F. Supp. 2d 283, 296-98 (S.D.N.Y. 2000) ("*Blondin III*"), *aff'd*, 238 F.3d 153 (2d Cir. 2001) (objection based on multiple factors, including allegations of abuse, and grave risk was independently established).

Applicant Details

First Name	**Brian**
Middle Initial	**M**
Last Name	**Erickson**
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Address	**Address** Street **274 Sterling Pl. #1** City **Brooklyn** State/Territory **New York** Zip **11238** Country **United States**
Contact Phone Number	**520-850-1795**

Applicant Education

BA/BS From	**Occidental College**
Date of BA/BS	**May 2016**
JD/LLB From	**Stanford University Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011**
Date of JD/LLB	**June 12, 2021**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Stanford Law Review; Stanford Law & Policy Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Marion Rice Kirkwood Moot Court (Semifinalist & Best Respondent's Brief)**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Zambrano, Diego
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650-723-4455
Koski, Bill
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Meyler, Bernadette
bmeyler@law.stanford.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

BRIAN ERICKSON
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January 29, 2021

The Honorable Eric N. Vitaliano
U.S. District Court for the Eastern District of New York
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

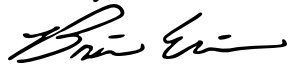
Dear Judge Vitaliano:

I am a first-year associate at the New York office of Paul, Weiss, Rifkind, Wharton & Garrison LLP and a graduate of Stanford Law School. I write to apply to serve as your law clerk for the 2023-2024 term.

Please find my resume, law school and undergraduate transcripts, and writing sample enclosed for your review. Letters of recommendation from Professors William Koski, Bernadette Meyler, and Diego Zambrano are also included.

I welcome any opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,



Brian Erickson

BRIAN ERICKSON

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EDUCATION

Stanford Law School Stanford, CA
Juris Doctor, June 2021
Honors: Judge Thelton E. Henderson Prize for Outstanding Performance (Youth & Education Law Project); Semifinalist & Best Respondent's Brief (Marion Kirkwood Moot Court); Pro Bono Distinction
Journals: *Stanford Law Review* (Member Editor, Vol. 73); *Stanford Law & Policy Review* (Lead Articles Editor, Vol. 30; Member Editor, Vol. 29)
Activities: Moot Court (Competitor); Stanford Public Interest Law Foundation (Vice President of Bar Grants); COVID-19 Pro Bono (Volunteer); Record Expungement Pro Bono (Volunteer); OutLaw (Member)

Occidental College Los Angeles, California
Bachelor of Arts, *summa cum laude*, in Politics, May 2016
Honors: Phi Beta Kappa; Caldwell Award for Outstanding Politics Senior; Departmental Honors for Senior Thesis; Hammack Award for Outstanding Junior; Bell Award for Creative Achievement

PUBLICATION

Note, *Second Amendment Federalism*, 73 STAN. L. REV. 727 (2021).

EXPERIENCE

Paul, Weiss, Rifkind, Wharton & Garrison LLP New York, NY
Associate (passed New York bar exam; admission pending) October 2021 – present
Summer Associate June – July 2020
- Authored memoranda and assisted with motion practice on COVID-19-related litigation.
- Researched arbitration law in seven jurisdictions and created deliverables discussing arbitral seat selection.
- Drafted memoranda and complaints for a pro bono project advancing voting rights.

Professor Diego Zambrano, Stanford Law School Stanford, CA
Research Assistant January 2020 – May 2021
- Reviewed literature for an academic project on the role of foreign regulation in shaping U.S. litigation.
- Identified and analyzed relevant case law and docket materials from MDLs involving transnational actors.

Giffords Law Center to Prevent Gun Violence San Francisco, CA
Legal Intern June – August 2019
- Researched and authored memorandum outlining originalist arguments in favor of firearm regulation.
- Composed analyses on regulations governing firearm access for people convicted of hate crimes.
- Drafted arguments for amicus briefs on Second Amendment cases pending in federal court.

NYC Department of Education, Division of Early Childhood Education New York, NY
Associate Process Manager June 2017 – August 2018
- Wrote a procurement awarding tens of millions of dollars to organizations providing free pre-kindergarten.
- Managed and trained early childhood education evaluators.
- Coordinated, designed, and facilitated outreach sessions to local preschool providers.

NYC Mayor's Office of Housing Recovery Operations New York, NY
Urban Fellow September 2016 – May 2017
- Designed and executed a qualitative analysis of NYC's post-disaster homeowner relief program.
- Generated weekly workforce reports, managing data on 5,000 employees from 200 contractors.
- Facilitated resolutions of administrative construction delays.

INTERESTS

Playwriting; contemporary literature (Morrison, DeLillo); desert hiking; baking

Leland Stanford Jr. University
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Law Unofficial Transcript

Name : Erickson,Brian M
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Print Date: 08/04/2021

--------- Stanford Degrees Awarded ---------

Degree : Doctor of Jurisprudence
Confer Date : 06/13/2021
Plan : Law

--------- Academic Program ---------

Program : Law JD
09/24/2018 : Law (JD)
Plan
Status Completed Program

--------- Beginning of Academic Record ---------

2018-2019 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	201	CIVIL PROCEDURE I	4.00	4.00	H	
Instructor:		Sinnar, Shirin A				
LAW	205	CONTRACTS	4.00	4.00	P	
Instructor:		Triantis, George Gregory				
LAW	207	CRIMINAL LAW	4.00	4.00	P	
Instructor:		Kelman, Mark G				
LAW	219	LEGAL RESEARCH AND WRITING	2.00	2.00	P	
Instructor:		Merino, Jeanne E.				
LAW	223	TORTS	4.00	4.00	P	
Instructor:		Rabin, Robert				

LAW TERM UNTS: 18.00 LAW CUM UNTS: 18.00

2018-2019 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	203	CONSTITUTIONAL LAW	3.00	3.00	H	
Instructor:		Meyler, Bernadette				
LAW	217	PROPERTY	4.00	4.00	H	
Instructor:		Thompson Jr, Barton H				
LAW	224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	H	
Instructor:		Alexander, Yonina				
LAW	2401	ADVANCED CIVIL PROCEDURE	3.00	3.00	H	
Instructor:		Zambrano, Diego Alberto				

LAW TERM UNTS: 12.00 LAW CUM UNTS: 30.00

2018-2019 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	P	
Instructor:		Alexander, Yonina				
LAW	1001	ANTITRUST	4.00	4.00	H	
Instructor:		Van Schewick, Barbara				
LAW	2001	CRIMINAL PROCEDURE: ADJUDICATION	4.00	4.00	H	
Instructor:		Weisberg, Robert				
LAW	7018	DISABILITY LAW	3.00	3.00	P	
Instructor:		Belt, Rabia S				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 43.00

2019-2020 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	2002	CRIMINAL PROCEDURE: INVESTIGATION	4.00	4.00	H	
Instructor:		Weisberg, Robert				
LAW	5801	LEGAL STUDIES WORKSHOP	1.00	1.00	MP	
Instructor:		Fried, Barbara H Meyler, Bernadette				
LAW	7014	CONSTITUTIONAL THEORY	3.00	3.00	H	
Instructor:		Meyler, Bernadette				
LAW	7041	STATUTORY INTERPRETATION	3.00	3.00	H	
Instructor:		Schacter, Jane				
LAW	7051	LOCAL GOVERNMENT LAW	3.00	3.00	P	
Instructor:		Ford, Richard				

LAW TERM UNTS: 14.00 LAW CUM UNTS: 57.00

2019-2020 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	2402	EVIDENCE	5.00	5.00	MPH	
Instructor:		Fisher, George				
LAW	2407	ARBITRATION: LAW, PRACTICE & POLITICS	3.00	3.00	H	
Instructor:		Hensler, Deborah R				
LAW	7001	ADMINISTRATIVE LAW	4.00	4.00	MPH	
Instructor:		Ho, Daniel E.				

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Leland Stanford Jr. University
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Law Unofficial Transcript

Name : Erickson,Brian M
Student ID : 06280318

LAW TERM UNTS: 12.00 LAW CUM UNTS: 69.00

2019-2020 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	5013	INTERNATIONAL LAW	4.00	4.00	MPH	
Instructor:		Weiner, Allen S.				
LAW	7097	EDUCATIONAL RIGHTS WORKSHOP	4.00	4.00	MPH	
Instructor:		Ford, Tara Chantelle Koski, William Sheldon				
LAW	7826	ORAL ARGUMENT WORKSHOP	2.00	2.00	MPH	
Instructor:		Fenner, Randee J				

LAW TERM UNTS: 10.00 LAW CUM UNTS: 79.00

2020-2021 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	1013	CORPORATIONS	4.00	4.00	P	
Instructor:		Klausner, Michael				
LAW	2403	FEDERAL COURTS	4.00	4.00	H	
Instructor:		Tyler, Charles William				
LAW	5042	COMPARATIVE LAW AND SOCIETY	2.00	2.00	H	
Instructor:		Friedman, Lawrence				
LAW	7820	MOOT COURT	2.00	2.00	MP	
Instructor:		Fenner, Randee J Pearson, Lisa M				

LAW TERM UNTS: 12.00 LAW CUM UNTS: 91.00

2020-2021 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	922A	YOUTH AND EDUCATION LAW PROJECT: CLINICAL PRACTICE	4.00	4.00	H	
Instructor:		Ford, Tara Chantelle Koski, William Sheldon				
LAW	922B	YOUTH AND EDUCATION LAW PROJECT: CLINICAL METHODS	4.00	4.00	P	
Instructor:		Ford, Tara Chantelle Koski, William Sheldon				
LAW	922C	YOUTH AND EDUCATION LAW PROJECT: CLINICAL COURSEWORK	4.00	4.00	H	
Instructor:		Ford, Tara Chantelle Koski, William Sheldon				
Transcript Note:		Judge Thelton E. Henderson Prize for Outstanding Performance				
LAW	7820	MOOT COURT	1.00	1.00	MP	
Instructor:		Fenner, Randee J Pearson, Lisa M				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 104.00

2020-2021 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	6003	THE AMERICAN LEGAL PROFESSION	3.00	3.00	P	
Instructor:		Gordon, Robert W				
LAW	7010A	CONSTITUTIONAL LAW: THE FOURTEENTH AMENDMENT	3.00	3.00	H	
Instructor:		Banks, Ralph Richard				
LAW	7821	NEGOTIATION	3.00	3.00	MP	
Instructor:		Notini, Jessica				

LAW TERM UNTS: 9.00 LAW CUM UNTS: 113.00

END OF TRANSCRIPT

Information must be kept confidential and must not be disclosed to other parties without written consent of the student.
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Occidental College

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Record of: Brian Michael Erickson Page: 1
Issued To: Brian Erickson
7158534A

Course Level: Undergraduate
High School: Catalina Foothills High School 01-MAY-2012
Matriculated: 2012 Fall Semester

Current Program
Major : Politics
Minor : English

Degrees Awarded Bachelor of Arts 15-MAY-2016
Inst. Honors: Phi Beta Kappa - August
In Politics
Summa cum Laude

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:						
APCR		AP EXAMS				
Ehrs: 24.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						
SUM2013		Pima Community College Dist				
Ehrs: 4.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						
INSTITUTION CREDIT:						
2012 Fall Semester						
CSP	6	Epidemics in CA History	4.00	A	16.00	
ECON	101	Principles of Economics I	4.00	A	16.00	
MATH	114	Calculus 1 (Experienced)	4.00	A	16.00	
SPAN	202	Advanced Spanish	4.00	A-	14.80	
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 62.80 GPA: 3.93						
Dean's List						
2013 Spring Semester						
CSP	58	Theater About Theater	4.00	A	16.00	
DWA	260	Model United Nations	2.00	CR	0.00	
ECLS	220	Introduction to Shakespeare	4.00	A	16.00	
HIST	182	Hist of the Modern Middle East	4.00	A	16.00	
POLS	101	Amer Politics/Public Policy	4.00	A	16.00	
Ehrs: 18.00 GPA-Hrs: 16.00 QPts: 64.00 GPA: 4.00						
Dean's List						
2013 Fall Semester						
ECLS	353	Global 1930s: Lit/Phil/Pols	4.00	A-	14.80	
POLS	252	Eur Pol Thought:Hobbes-Marx	4.00	A	16.00	
POLS	365	The American Presidency	4.00	A	16.00	
THEA	101	Theater Forum	4.00	A	16.00	
WRD	395	Theory and Pedagogy of Writing	2.00	A	8.00	I
Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 70.80 GPA: 3.93						
Dean's List						
2014 Spring Semester						
ECLS	372	Major Figures in Literature	4.00	A	16.00	
POLS	103	Research Meth/Pols & Pub Pol	4.00	A-	14.80	
POLS	336	National Security/Arms Control	4.00	B+	13.20	
********** CONTINUED ON NEXT COLUMN **********						

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
WRD	301	Creative Non-Fiction	4.00	A	16.00	
WRD	395	Theory and Pedagogy of Writing	2.00	A	8.00	I
Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 68.00 GPA: 3.78						
Dean's List						
2014 Fall Semester						
ENGL	289	The American Experience/Lit	4.00	A	16.00	
POLS	345	The Fourth Amendment	4.00	A	16.00	
THEA	380	Playwriting	4.00	A	16.00	
UEP	212	Debates/Controver/Educ-Panel	2.00	A-	7.40	
WRD	395	Theory and Pedagogy of Writing	2.00	A	8.00	I
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.40 GPA: 3.96						
Dean's List						
2015 Spring Semester						
ARTM	220	Narrative Practices	4.00	A	16.00	
ENGL	365	Contemporary Literature	4.00	A	16.00	
POLS	235	US Foreign Relations	4.00	A	16.00	
POLS	397	Human Rights Law in the U.S.	4.00	A	16.00	
THEA	190	Theater Now: Los Angeles	2.00	A	8.00	I
Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 72.00 GPA: 4.00						
Dean's List						
2015 Summer						
INT	100	Planned Parenthood Pasdna. SGV	0.00	CR	0.00	
Ehrs: 0.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00						
2015 Fall Semester						
ENGL	288	Modern Brit Literary Trad	4.00	A	16.00	
POLS	244	Constitutional Law	4.00	A	16.00	
POLS	325	Politics & Security/New Europe	4.00	A	16.00	
THEA	190	Theater Now: Los Angeles	2.00	A	8.00	I
THEA	397	I.S.:Advanced Playwriting	2.00	CR	0.00	
Ehrs: 16.00 GPA-Hrs: 14.00 QPts: 56.00 GPA: 4.00						
2016 Spring Semester						
POLS	260	Community Law Internship	4.00	A	16.00	
POLS	340	Rebellious Lawyering	4.00	A	16.00	
POLS	495	Comprehensive Seminar	4.00	A	16.00	
POLS	999	Comprehensive Examination	0.00	PD	0.00	
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 48.00 GPA: 4.00						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
OVERALL	160.00	128.00	505.00	3.95

********** END OF TRANSCRIPT **********

From Occidental College to brianerickson93@gmail.com on 09/06/2016 12:16 PM TRAN000010450586

OCCIDENTAL COLLEGE

Office of the Registrar
1600 Campus Road
Los Angeles, California 90041-3314
(323) 259-2686

ACCREDITATION:
Occidental College is accredited by the Western Association of Schools and Colleges.

ACADEMIC CALENDAR:
The College operates on a semester system. The calendar consists of a Fall Semester and a Spring Semester during the academic year. Students may also receive credit for independent study and internship work during the summer.

Prior to August 2005 there were summer sessions of varying lengths.
Prior to August 1994 there were three eleven-week terms with each term equivalent to a semester.

COURSE LEVEL:
Current:

1-89	first-year Cultural Studies
100-299	lower division
300-499	upper division
500-599	graduate

Prior to August 1994 (the first three digits represent the course number; the fourth digit represents the section number):

1-49	basic or introductory level
50-99	intermediate level
100-199	advanced level
200-399	graduate level

CLASSIFICATION:

Freshman	0-31 semester units
Sophomore	32-63 semester units
Junior	64-95 semester units
Senior	96 or more semester units

NUMERIC GRADE POINT EQUIVALENTS:

A = 4.0	Excellent	C = 2.0	Satisfactory
A- = 3.7		C- = 1.7	
B+ = 3.3		D+ = 1.3	
B = 3.0	Good	D = 1.0	Barely Passing
B- = 2.7		F = 0.0	Failure
C+ = 2.3			

OTHER GRADES:

AUD	(Audit)	NR	(No Record)
CIP	(Course in Progress)	P	(Pass)
CR	(Credit)	PD	(Pass with Distinction)
DEF	(Deferred)	W	(Withdrawal)
INC	(Incomplete)	W P	(Withdraw Passing)
NC	(No Credit)	WF	(Withdraw Failing)

SCHOLARSHIP REQUIREMENTS:
The College uses two criteria to establish the scholastic status of a student; that based on the 2.0 grade point average, and that based on the number of courses successfully completed with respect to the total number of courses taken (normal academic progress).

GRADUATION REQUIREMENTS:
1) Completion of at least 128 semester units of credit.
2) Attainment of a 2.0 grade point average or better for all courses taken and in the major.
3) Satisfaction of a writing proficiency requirement.
4) Completion of general course requirements:
   Core Program: (present) An eight-course sequence.
   Core Program: (1997-2007) A nine-course sequence.
   Cultural Studies Program: (1994-1996) A nine-course sequence.
   Core Program: (1982-1994) A ten-course sequence.
   General Studies: (1974-1981) A six-course sequence.
5) Competence in a Foreign Language.
6) Completion of a major or Independent Pattern of Study.
7) Passing a final comprehensive requirement in the senior year in the major subject or area of concentration

RELEASE OF INFORMATION:
In accordance with the Family Education Rights and Privacy Act of 1974, as amended, this information is released on the condition that no other party will be permitted access to this information without written consent of the student.

Diego Zambrano
Assistant Professor of Law
Stanford Law School
Crown Quadrangle
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Stanford, California 94305-8610
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650 721.7681

January 29, 2022

The Honorable Eric Vitaliano
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 707 S
Brooklyn, NY 11201-1818

Dear Judge Vitaliano:

It is with great enthusiasm that I write to recommend Brian Erickson for a clerkship in your chambers. Brian has been an outstanding student at Stanford Law School, exhibiting a high degree of competence, intelligence, and professionalism. Indeed, he has a compelling record of 10 Honors in difficult classes, including an H in my class, Advanced Civil Procedure, even though he was only one of two 1Ls that took it (the class is usually for upperclassmen). Most importantly, Brian has been an exceptional research assistant, helping me work on a project on the relationship between complex litigation and foreign regulation. I met with him on a weekly basis for this project and found him to be incredibly bright and competent. I am convinced that Brian would be an excellent clerk who would bring hard work, competence, and intelligence to chambers.

Brian was a student in my Advanced Civil Procedure class in 2019 and has been my research assistant in 2020. As you may know, Advanced Civil Procedure provides instruction in some of the most important and foundational concepts in our litigation system – class actions, multidistrict litigation, preclusion, etc. I therefore have a unique view of Brian's aptitude for litigation and the way our judiciary operates. I can tell you that he is an excellent law student. His final Honors grade was the result of outstanding brightness.

Keep in mind the trend in Brian's grades: the few Passes that he has received in class are almost all from his 1L fall quarter. Since then, Brian has maintained an average of 75% Honors grades per quarter, showing great progress. In my interactions with him, Brian's intelligence came through in at least three ways:

First, Brian's exam was outstanding, placing in the top five of the class, and easily earning him an Honors grade. Brian was one of the only students to successfully spot all important issues and untangle the complex web of facts and arguments that I presented in the exam. Brian's writing in the exam was clear and succinct. In part one of the exam, I tested the students on the complex interaction between joinder and preclusion. Brian successfully unpacked every advanced civil procedure topic in the book: diversity jurisdiction, permissive joinder, supplemental jurisdiction, required joinder, subject matter jurisdiction, crossclaims, claim preclusion, issue preclusion, and offensive non-mutual collateral estoppel. He carefully waded through these questions, incisively analyzing specific language from the federal rules, as well as cases applying the rules. His analysis was particularly strong in a question related to whether a federal court should dismiss a civil action for which it has supplemental jurisdiction when it has dismissed the claims for which it had original jurisdiction. Drawing both on the text of the relevant rule and discussions we had in class, Brian analyzed the text of the supplemental jurisdiction statute, §1367, carefully and intelligently, coming to a compelling conclusion.

I also want to highlight Brian's performance in part four of the exam where he wrote the best answer in the class. In that part, I asked students to critically evaluate one of the main themes of the course: the role of litigation as a regulatory instrument in American society. I specifically asked students to choose two cases as examples of this theme. Brian masterfully seized this question. He was able to think systemically, putting together all of the different classes, doctrines, and cases, and then engaging with the broader purposes of the private enforcement system. He understood how arbitration interacted with statutes that empower private plaintiffs to file their claims. He was also able to see the long-run developments in procedures that have made it more difficult for plaintiffs to file claims in federal courts. All in all, Brian showed a remarkable ability to analytically integrate different parts of the course.

Second, Brian has been a stupendous research assistant. In the spring of 2020, I began a project on the interaction between complex litigation and foreign regulations. I had found that a few multidistrict litigation cases were routinely citing foreign regulations. At first, I had no idea how broad the phenomenon was or what it could mean. I found myself in dire need of a research assistant and knew immediately that I should reach out to Brian. I tasked him with research on the extent of the phenomenon and relevant case law. These questions required a lot of entrepreneurial and independent thinking. Over the following month, Brian put together an amazing series of research reports, meeting with me on a weekly basis. Perhaps the most important aspect of his research was his innovative thinking and knowledge about litigation. Brian quickly became a veritable expert on multidistrict litigation, fraud on the Food and Drug Administration claims, and mass torts claims more

generally. I cannot stress enough what a magnificent research assistant he has been. Brian showed me that he could quickly dive into an area of law and develop an understanding of the system. Throughout my conversations with him, he was prepared, clear, professional, and bright.

Third, Brian was a great class participant in Advanced Civil Procedure, always prepared and incisive. I particularly remember our class on a labor class action case, Tyson Foods, when we were covering the intricacies of statistical evidence in complex litigation. I asked Brian to think about the use of statistical evidence in this case as compared to other cases, like Wal-mart v. Dukes, that we had studied in the past few weeks. Brian put together compelling answers and arguments, noting that the statistical evidence submitted in Tyson Foods was more rote than that in Wal-Mart, and therefore more generalizable. He also argued that the averages being used in Tyson Foods have clearer implications for calculating individual damages than the qualitative findings of the study in Wal-Mart. The key aspect of Brian's response was not only that he was prepared, but that he connected two disparate cases and spoke more generally to a trend we saw across many of the class actions we studied over the entire course. This exemplifies Brian's ability to think broadly across areas of law.

I would be remiss if I did not discuss Brian's high degree of professionalism and decency. He is polite, on time, and always prepared. He always attended class, showed up to office hours or meetings early, treated me and others with respect, and always submitted polished drafts as a research assistant. Brian is a very hard worker. Beyond what he has shown in my class and as a research assistant, it is clear from his activities at the law school that Brian is highly respected and valued by his classmates and professors. He is the Lead Articles Editor for the Stanford Law & Policy Review, where he manages a team of six other students and oversees the article selection process. He has also shown an important commitment to pro bono work, both as a volunteer on several record expungement projects and as a Vice President of the Stanford Public Interest Law Foundation. These activities show Brian has a wide range of interests and is committed to helping others. They also show Brian's fundamental interest in litigation as a career path.

Finally, Brian's background and commitment to service show that he has learned important lessons in his life. Brian grew up with a mother and a father who worked as a high school teacher and a public defender. Brian has told me how this instilled in him the notion that service should weave into every aspect of one's personal and professional life. The bottom line is this: Brian is an excellent student; a magnificent research assistant; professional and decent; as well as a quick learner and hard worker. I am confident he would be a first-rate clerk in your chambers. Without hesitation, I give him a strong recommendation.

Sincerely,

/s/ Diego Zambrano

Diego Zambrano - dzambrano@law.stanford.edu